

SMUD STATUS CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for)
Certification of the)
Sacramento Municipal) Docket No. 01-AFC-18
Utility District)
Cosumnes Power Plant)
Project)
_____)

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

TUESDAY, MAY 14, 2002

10:10 a.m.

Reported by:
Peter Petty
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Presiding Commissioner

HEARING OFFICER AND ADVISORS PRESENT

Garrett Shean, Hearing Officer

Ellen Townsend Smith, Advisor to Commissioner
Pernell

STAFF AND CONSULTANTS PRESENT

Kristy Chew, Project Manager

Caryn Holmes, Staff Counsel

Robert Haussler, Environmental Office

ASSOCIATE PUBLIC ADVISER

Grace Bos

APPLICANT

Steven M. Cohn, Senior Attorney, Legal Department,
Sacramento Municipal Utility District

Genevieve Shiroma, President, Ward 4 Board of
Directors, Sacramento Municipal Utility District

Susan Patterson, Vice President, Ward 2 Board of
Directors, Sacramento Municipal Utility District

James R. Shetler, Assistant General Manager,
Energy Supply, Sacramento Municipal Utility
District

Colin Taylor, Director, Cosumnes Power Project
Power Generation, Sacramento Municipal Utility
District

Kevin Hudson, PE, Project Manager, Integrated
Engineers & Contractors Corporation

APPLICANT (continued)

John L. Carrier, JD, Senior Project Manager
CH2M Hill

Jane E. Luckhardt, Esq., Downey Brand Seymour &
Rohwer

Gary S. Rubenstein, Sierra Research

MEMBERS OF THE PUBLIC

Cheri Tall (via telephone)

AGENCIES

Aleta Kennard, Program Supervisor, Technical
Services Section, Sacramento Metropolitan Air
Quality Management District

Cecil H. Lesley, Repayment Specialist, US
Department of the Interior, Bureau of Reclamation

Tad S. Berkebile, Senior Civil Engineer, Freeport
Regional Water Project and Water Acquisition,
County of Sacramento, Department of Water
Resources

INTERVENORS

Sky C. Stanfield, Legal Assistant, Adams Broadwell
Joseph & Cardozo, on behalf of California Unions
for Reliable Energy

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1 P R O C E E D I N G S

2 10:10 a.m.

3 PRESIDING COMMISSIONER PERNELL: Good
4 morning. Are we expecting some people on the
5 phone?

6 TELEPHONIC SPEAKER TALL: Yes, hello.
7 Hi, my name is Cheri Tall.

8 PRESIDING COMMISSIONER PERNELL: And
9 you're with?

10 TELEPHONIC SPEAKER TALL: I actually
11 live out in Winters and I received a letter that
12 the project would be affecting where I live.

13 PRESIDING COMMISSIONER PERNELL: Okay,
14 welcome.

15 TELEPHONIC SPEAKER TALL: Thank you.

16 PRESIDING COMMISSIONER PERNELL: Is
17 there anyone else?

18 Well, again, good morning. My name is
19 Commissioner Pernell. I'm a presiding member on
20 this committee, along with my colleague,
21 Commissioner Rosenfeld, who was unable to be here
22 this morning. We want to welcome everybody to
23 this committee hearing, and there is a lot that --
24 Let me just make a statement here, I guess. There
25 is a lot that has been said, there is a lot that

1 hasn't been received, and there are some questions
2 about data requests.

3 So we'd like to get to those, and let me
4 introduce the dais. My advisor is Ellen Townsend
5 Smith to my left, and our hearing officer this
6 morning and for this project is Mr. Garrett Shean.

7 Okay. So what I'd like to do is turn it
8 over to our hearing officer, and you've got to
9 bear with us, because I'm going to be stopping
10 people and asking questions. And I'm assuming
11 that everybody is ready.

12 Mr. Shean.

13 HEARING OFFICER SHEAN: Good morning.

14 What we'd like to do initially is have
15 the parties introduce themselves, starting with
16 the staff. If there are intervenors in the
17 audience, please stand and introduce yourself.

18 And if there are members of the public
19 who are here and who would like to comment, we can
20 do this in one of two ways. We have over here
21 Grace Bos, who is a representative of the Public
22 Adviser's office. She has a small stack of little
23 blue cards; if you would like, just indicate to
24 her that you would like a card and she will bring
25 it up here and we will make sure you speak before

1 the end of the meeting; however, even if you do
2 not submit a blue card, we will have a public
3 comment period during the proceeding during which
4 we have an open mic. If you'll just come forward
5 and identify yourself, we'll give you an
6 opportunity to speak.

7 PRESIDING COMMISSIONER PERNELL:

8 Mr. Shean, can I stop you for a minute? I see
9 that we have a number of board members from SMUD
10 and the president of the board of the Sacramento
11 Municipal Utility District. And I'd like to --
12 I'm not sure what your time is, but I'd certainly
13 like to give you an opportunity to say a few words
14 if you like or you can wait until the end. And
15 I'm not sure when that would be --

16 SMUD BOARD PRESIDENT SHIROMA: Thank
17 you, and good morning.

18 PRESIDING COMMISSIONER PERNELL: Good
19 morning.

20 SMUD BOARD PRESIDENT SHIROMA:
21 Commissioner Pernell and Hearing Officer Shean,
22 Advisors, thank you so much. And I appreciate you
23 allowing me to speak right up front.

24 PRESIDING COMMISSIONER PERNELL: You'll
25 have to identify yourself for the record.

1 SMUD BOARD PRESIDENT SHIROMA: Okay. My
2 name is Genevieve Shiroma. I am the president of
3 the SMUD board of directors. And I was
4 specifically elected to represent Ward 4. Ward 4
5 includes the Sacramento city neighborhoods of
6 Curtis Park, Land Park, Greenhaven, pocket Laguna,
7 and the Sacramento County areas of Elk Grove,
8 Sheldon and Walnut Grove. Also here today is our
9 vice president, Susan Patterson, who represents
10 Ward 2, and Ward 2 includes the Rancho Seco
11 Cosumnes power plant site.

12 We appreciate the opportunity to meet
13 with you today and provide testimony which we hope
14 will be helpful in the permitting process, and I
15 really want to emphasize that. Now, as you know,
16 especially Commissioner Pernell -- I almost want
17 to call him Director Pernell -- as you know, SMUD
18 is a publicly owned utility with a seven-member
19 elected board. Last year the SMUD board of
20 directors adopted a ten-year resource plan, really
21 the first of its kind in the state, let alone the
22 nation, which lays out how SMUD will meet the
23 community's needs for power between 2001 and 2011.

24 To continue SMUD's tradition as a good
25 steward of the environment, our resource plan

1 includes a strong commitment to energy efficiency
2 and renewable resources. We will rely on our
3 energy efficiency programs to offset 20 percent of
4 the load growth we anticipate over the next ten
5 years. You can see the Sacramento area is
6 booming, and lots of homebuilding and commercial.
7 In addition, we are adding wind power to serve the
8 equivalent of 12,000 homes. We are expanding our
9 solar program to serve the equivalent of 8,000
10 homes.

11 Briefly, I wanted to touch on the power
12 plant. We will need replacement power, despite
13 these renewable energy efforts for large purchase
14 contracts, which are expiring in 2005. Our
15 adopted plan relies on the proposed natural gas
16 power plant, the Cosumnes power plant to be
17 licensed and to have that first 500 megawatts up
18 and running in 2005 before these contracts expire,
19 and I know that you are very sensitive to that.

20 It was a big decision by the SMUD board
21 of directors. Its approval was a unanimous vote
22 to engage in this process, to make the commitments
23 to the equipment, to the contracts. We are
24 definitely committed to its success. You know,
25 even more than we do, that to build the plant

1 locally it will help us avoid outages, it will
2 provide economical regional voltage support and
3 meet our base load and peak load requirements.
4 And to help us, frankly, become independent from
5 out-of-state forces. Benefits go well beyond
6 Sacramento county.

7 Our project does have broad community
8 support, including the Sacramento Farm Bureau. In
9 designing the power plant our staff, whom you've
10 been working with, looked at all the environmental
11 impacts, and this was something that the SMUD
12 board of directors definitely wanted to have
13 emphasized and done, to look at a proposal that
14 has the smallest footprint, that will have the
15 least impact on wetlands and biological resources,
16 the least emissions, the least visual impact, the
17 least noise impact. We're thinking, gee, if we
18 could site this plant and no one would even know
19 it's there, that would be the best thing.

20 We also have been very sensitive to
21 looking at the benefit for the south county water
22 users and ground water supply and the Cal Fed Bay
23 Delta program. I would like to very briefly touch
24 on the issue of water, specifically the use of
25 surface water for cooling the proposed power

1 plant. I know that there are a number of things
2 you're going to discuss today, whether it's air
3 quality or water permits and so forth.

4 This one has come to the attention of
5 the board. I wanted to emphasize that especially
6 being a public entity, we believe in the public
7 process. Our staff has participated for many
8 years in the water forum negotiations, a coalition
9 of 40 entities within the greater regional area,
10 and in that process the participants agreed that
11 electricity generation is extremely important and
12 that a portion of our water rights would be
13 allotted for use by SMUD for the water cooling.

14 The water forum had environmentalists,
15 local governments, ag leaders, citizen groups and
16 so forth, and we do feel very strongly about that
17 effort. We also know that there is a US Bureau of
18 Reclamation representative here today who will
19 also speak to this, and we would like to have the
20 Commission staff look at what US EPA is saying
21 about this particular issue.

22 In conclusion, we believe this proposed
23 project is both environmentally and economically
24 sound, it is critical for our future electricity
25 needs of this community. We appreciate your

1 giving your full and immediate and kindly
2 consideration of the project, and we thank you
3 very much for the opportunity. And again, thank
4 you, Commissioner, for allowing me to speak first.

5 PRESIDING COMMISSIONER PERNELL: Well,
6 thank you, and thank you for being here. Is
7 there -- I understand there is another board
8 member, okay.

9 Let me just say that, in terms of our
10 process, first of all, I have the utmost respect
11 for the utility and its board members, but, you
12 know, we have to do the work. There are no
13 shortcuts. We have to do the work, and I'm
14 looking at the report and our hearing officer will
15 kind of direct us through this. I would hope that
16 you have time to stay here and hear some of the
17 concerns that we have in terms of lack of
18 information.

19 But again, thank you for being here,
20 it's always a pleasure to see you. And the
21 integrity of this process is of the utmost
22 importance to me, and I have a great respect for
23 SMUD, but it doesn't give you a free pass.

24 SMUD BOARD PRESIDENT SHIROMA: Thank
25 you, Commissioner. Well, I was talking with some

1 acquaintances and I said, you know, the good news
2 is Commissioner Pernell knows SMUD very well. The
3 good or bad news is he's going to be very tough on
4 us if not tougher, and, you know, I have the
5 utmost respect for the Commission process, you
6 have to make sure every i is dotted and t is
7 crossed. You have the public good to look at and
8 I know it's rigorous. We're here to respond and
9 to comply with all of the requirements. Thank
10 you.

11 PRESIDING COMMISSIONER PERNELL: And we
12 will get through this.

13 SMUD BOARD PRESIDENT SHIROMA: Okay,
14 thank you.

15 PRESIDING COMMISSIONER PERNELL: Thank
16 you.

17 Okay, Mr. Shean.

18 HEARING OFFICER SHEAN: All right. Why
19 don't we have the staff proceed, then, please.

20 PROJECT MANAGER CHEW: Good morning. My
21 name is Kristy Chew. I'm the Energy Commission
22 project manager --

23 PRESIDING COMMISSIONER PERNELL: Can
24 everybody hear? You might have to be a little
25 closer to the mic.

1 PROJECT MANAGER CHEW: Good morning. My
2 name is Kristy Chew. I'm the Energy Commission
3 project manager.

4 STAFF COUNSEL HOLMES: Caryn Holmes,
5 staff counsel.

6 HEARING OFFICER SHEAN: Why don't you go
7 ahead with your -- well, with the introductions
8 here, people from SMUD, and then anyone in the
9 audience.

10 APPLICANT COUNSEL COHN: Okay. You've
11 heard from our Board President Shiroma and Board
12 Director Susan Patterson. My name is Steven Cohn.
13 I'm an attorney for the district, and with me to
14 my right is our assistant general manager Jim
15 Shetler, who is AGM for energy supply. And to his
16 right is Colin Taylor, who is the project
17 director. And Colin has been responsible for
18 developing all of our gas-fired plants over the
19 last eight, ten years.

20 Also with us today, behind me, Kevin
21 Hudson, who is our project manager; John Carrier
22 with CH2M Hill, who has been our principal
23 consultant doing the AFC work, and with us today
24 also is Jane Luckhardt from Downey Brand, who has
25 been working with me as co-counsel on the project.

1 There are a number of other people here that,
2 rather than introduce them now, we'll introduce
3 them as appropriate as we discuss certain issues.

4 Thank you.

5 HEARING OFFICER SHEAN: Is there anyone
6 in the audience representing a party or an
7 intervenor in the proceeding?

8 INTERVENOR STANFIELD: Hi, I'm Sky
9 Stanfield here, representing the California Unions
10 for Reliable Energy.

11 HEARING OFFICER SHEAN: Thank you.

12 PRESIDING COMMISSIONER PERNELL: I'm
13 sorry? I --

14 HEARING OFFICER SHEAN: CURE.

15 PRESIDING COMMISSIONER PERNELL: Oh,
16 CURE.

17 INTERVENOR STANFIELD: CURE.

18 PRESIDING COMMISSIONER PERNELL: Okay.

19 SMAQMD REP KENNARD: Hi, I'm Aleta
20 Kennard. I'm with the Sacramento Air District.

21 PRESIDING COMMISSIONER PERNELL:
22 Welcome.

23 HEARING OFFICER SHEAN: Thank you.

24 PRESIDING COMMISSIONER PERNELL: Are
25 there any other agencies?

1 BUREAU OF RECLAMATION REP LESLEY: I'm
2 Cecil Lesley. I'm with the US Bureau of
3 Reclamation.

4 PRESIDING COMMISSIONER PERNELL:
5 Welcome.

6 DWR REP BERKEBILE: I'm Tad S.
7 Berkebile. I'm with the County of Sacramento
8 Department of Water Resources.

9 PRESIDING COMMISSIONER PERNELL:
10 Welcome.

11 HEARING OFFICER SHEAN: All right.
12 With that, why don't we have the staff
13 begin the substance of its presentation.

14 PROJECT MANAGER CHEW: Hearing Officer
15 Shean, do you want to take --

16 HEARING OFFICER SHEAN: Why don't you
17 indicate the document you just filed, I guess
18 today, and give us an overview of it, the matters
19 that you think are pending for the completion of a
20 staff preliminary assessment.

21 PROJECT MANAGER CHEW: In April?

22 APPLICANT COUNSEL COHN: Mr. Shean?

23 HEARING OFFICER SHEAN: Yes?

24 APPLICANT COUNSEL COHN: Before she
25 begins, if there is something filed today, we

1 haven't received it yet. Would that be something
2 we can get a copy of?

3 STAFF COUNSEL HOLMES: Yes, you can.
4 There's --

5 APPLICANT COUNSEL COHN: Do you have
6 multiple -- They're not out there?

7 STAFF COUNSEL HOLMES: It's more of a
8 talking piece than a -- We were planning to docket
9 it.

10 APPLICANT COUNSEL COHN: Oh, oh --

11 HEARING OFFICER SHEAN: It basically, I
12 think, recapitulates --

13 APPLICANT COUNSEL COHN: So you're going
14 to go through this --

15 STAFF COUNSEL HOLMES: We were just
16 going to walk through it, right. Those are more
17 like notes for the discussion.

18 APPLICANT COUNSEL COHN: All right, got
19 you.

20 HEARING OFFICER SHEAN: I understand it
21 basically recapitulates the April 10th status
22 report.

23 APPLICANT COUNSEL COHN: All right,
24 thank you.

25 PROJECT MANAGER CHEW: Yes. As

1 indicated in the April 10th staff status report,
2 staff had met with SMUD in a few meetings, and we
3 discussed the timing of the issuance of the
4 preliminary staff assessment. And staff had made
5 recommendations and suggestions how complete the
6 document could be at this time, based on the data
7 response we've received to date and the
8 investigation that staff has undertaken.

9 At that time, SMUD had indicated that
10 they would prefer to have a PSA earlier, and maybe
11 not perhaps wait for the complete information.
12 Staff, in coordination with SMUD, trying to
13 cooperate with SMUD, we agreed to publish the PSA
14 possibly sooner than having a complete PSA
15 document.

16 There are a number of items that staff
17 feels are necessary to have a more complete
18 preliminary staff assessment, and as identified in
19 my notes, air quality is a major concern. We are
20 lacking in preliminary determination of compliance
21 from the Sacramento Metropolitan Air Quality
22 Management District. We do not have a complete
23 air emissions offset package from SMUD at this
24 time.

25 For biological resources --

1 HEARING OFFICER SHEAN: Why don't we do
2 this topic by topic.

3 PROJECT MANAGER CHEW: Okay.

4 HEARING OFFICER SHEAN: I think it's
5 going to be more beneficial.

6 If I understand correctly, as far as the
7 PDOC from Sacramento AQMD, they are awaiting
8 action by, what is it, Sutter and Placer counties
9 to okay some interdistrict ERCs; is that correct?

10 PRESIDING COMMISSIONER PERNELL: Why
11 don't we have --

12 SMAQMD REP KENNARD: Sure. That's one
13 of the pieces --

14 HEARING OFFICER SHEAN: Why don't you
15 identify yourself for us.

16 SMAQMD REP KENNARD: Aleta Kennard with
17 the Sacramento Air District. That's one of the
18 pieces we still need to go forward with a
19 preliminary determination of compliance.

20 There are a number of things that have
21 to still be completed before we can go forward.
22 There are interpollutant trades involved with this
23 project that we have not worked out with the
24 oversight agencies, the appropriate ratio for.
25 There are the interdistrict transfers that have to

1 be completed. There is still not a complete
2 offset package as of today, depending on how these
3 ratios play out.

4 So we are, at this point in time, on
5 schedule of having a preliminary analysis for the
6 PDOC at the end of June without, but we will not
7 be going to an official preliminary determination
8 of compliance until the end of July because we
9 need to have a board action before we do that.

10 HEARING OFFICER SHEAN: Can you explain
11 that, you -- for you to have a PDOC you need
12 action by the board --

13 SMAQMD REP KENNARD: Right.

14 HEARING OFFICER SHEAN: -- to release it
15 publicly for a public comment period?

16 SMAQMD REP KENNARD: Yes. We need to --
17 We have not taken to our board the interdistrict
18 transfer aspects of the package, and that has to
19 occur before we go out to notice on the
20 preliminary determination of compliance. The next
21 board hearing that we can get on is in July, at
22 the end of the fourth Thursday in July.

23 PRESIDING COMMISSIONER PERNELL: Does
24 your board meet once a month?

25 SMAQMD REP KENNARD: They meet once a

1 month. The June board hearing was canceled.
2 They're having a special June board hearing for
3 another matter, but the hearing for June was
4 canceled.

5 PRESIDING COMMISSIONER PERNELL: Can
6 they get on the special board hearing?

7 SMAQMD REP KENNARD: We are not prepared
8 to put it on the special board hearing because we
9 do not have a complete package. We have not
10 performed all of the analysis that we feel is
11 necessary to put it on that board hearing.

12 PRESIDING COMMISSIONER PERNELL: So
13 you're awaiting additional information from the
14 applicant.

15 SMAQMD REP KENNARD: Right. We're also
16 waiting for additional information from Yolo-
17 Solano on their piece of the interdistrict
18 transfer.

19 PRESIDING COMMISSIONER PERNELL: Okay.

20 HEARING OFFICER SHEAN: Do you have
21 anything you want to say?

22 APPLICANT COUNSEL COHN: Of course.

23 (Laughter.)

24 APPLICANT COUNSEL COHN: There is a lot
25 I want to say, and I --

1 PRESIDING COMMISSIONER PERNELL: But we
2 want to stick strictly to air quality at this
3 point.

4 (Laughter.)

5 HEARING OFFICER SHEAN: And let me just
6 ask another question -- Stand by, Mr. Cohn.

7 APPLICANT COUNSEL COHN: All right.

8 HEARING OFFICER SHEAN: With respect to
9 this complete air emission offsets package, does
10 that include anything that is not a DOC but would
11 be a staff-identified CEQA type of impact that
12 requires additional offsets, such as PM10 for
13 construction or some other thing like that?

14 STAFF COUNSEL HOLMES: I don't believe
15 so, but since we haven't seen the complete offset
16 package, it's kind of hard for us to say at this
17 point as to whether or not it's sufficient.

18 HEARING OFFICER SHEAN: Okay.

19 APPLICANT COUNSEL COHN: I'm going to
20 introduce in just a moment Gary Rubenstein with
21 Sierra Research who has been working in the air
22 quality field for -- well, I'll just say many,
23 many years --

24 (Laughter.)

25 APPLICANT COUNSEL COHN: -- and we were

1 talking about that a little bit earlier today.
2 But let me just give a little bit of an overview
3 before we address the specific points, because
4 there's a different standard that's being now
5 applied to a PDOC. What we're basically being
6 told at this point is the level of information and
7 the level to which conditions are to be fulfilled
8 at the PDOC stage is the level that in previous
9 applications we've submitted either at the FDOC
10 stage or even after certification, and
11 particularly with the permits.

12 For example, the air offset package that
13 we have involved some air offsets that require an
14 interdistrict transfer and require approval before
15 of the district we're transferring from. So we
16 have Placer County, which has already approved our
17 package, and then we are before Yolo-Solano Air
18 Quality Management District as well as Feather
19 River, and we're on their schedule to be approved
20 in June.

21 Now, normally those agencies would have
22 waited for the Sacramento Air District to approve
23 before they would have even considered, from their
24 standpoint. But we pleaded with them because we
25 were being held up at the Sacramento district

1 until those district transfers were approved. So,
2 as a result, they've gone ahead and agreed to
3 consider those.

4 But let me just say, we have submitted
5 information, when you go all the way back to the
6 AFC they include a full offset package. Now,
7 you're going to hear from Gary as to some of the
8 technical issues that we've been going through.
9 But at the time this AFC was submitted and held to
10 be data adequate, by statute the air district has
11 180 days to issue a final DOC. That 180 days is
12 today.

13 We are now being told that they will not
14 even issue the PDOC for two months from now, or
15 actually more than two months, and the final DOC
16 approximately two months later, four months from
17 now. What we're talking about would be a
18 potentially, if we held everything else up in the
19 meantime, and this gets to why we think the PSA
20 should be issued, even in the absence of the PDOC,
21 there could be a several-month delay in the
22 process.

23 And I'd like to call up Gary Rubenstein
24 to speak specifically to some of the points
25 addressed by the air district, if I may.

1 PRESIDING COMMISSIONER PERNELL: Okay.

2 Well, let me ask you a question before that,
3 Mr. Cohn, and Gary can make his way up, this will
4 be short.

5 When did you get your package to the air
6 district?

7 APPLICANT COUNSEL COHN: We filed an
8 initial package back in September 2001. We filed
9 an additional supplement in October. We filed a
10 supplement after that in November. We have been
11 filing in response to data requests all along,
12 and --

13 PRESIDING COMMISSIONER PERNELL: Data
14 requests from the air district?

15 APPLICANT COUNSEL COHN: From both the
16 air district and the staff --

17 PRESIDING COMMISSIONER PERNELL: All
18 right, but we need to separate these issues.

19 APPLICANT COUNSEL COHN: Yes.

20 PRESIDING COMMISSIONER PERNELL: We're
21 talking about air quality.

22 APPLICANT COUNSEL COHN: That's what I'm
23 talking about.

24 PRESIDING COMMISSIONER PERNELL: That's
25 another agency that you need documentation from

1 that comes to us so we can do an analysis. So
2 that's the air quality district. Have you had
3 conversation with them to try and expedite your
4 package?

5 APPLICANT COUNSEL COHN: Yes. We've
6 been meeting with them regularly, Commissioner
7 Pernell, and I'd like to let Gary speak more
8 specifically to what we've been doing with the air
9 district, if I may.

10 PRESIDING COMMISSIONER PERNELL: Yes.

11 SIERRA RESEARCH REP RUBENSTEIN: Thank
12 you. For the record, my name is Gary Rubenstein
13 with Sierra Research. I'm here today on behalf of
14 the applicant.

15 Commissioner Pernell, we have, as
16 Mr. Cohn indicated, submitted what we believe to
17 be a nearly complete offset package with the
18 initial filing by September. Part of the reason
19 why, as Mr. Cohn indicated, there have been a
20 number of subsequent submittals is, to a certain
21 extent, we're dealing with a moving target which,
22 of course, is not unusual in the case of a power
23 plant project.

24 The initial offset package that we
25 submitted was based on a certain set of

1 assumptions regarding the availability and
2 approvability of certain credits, and over the
3 course of last fall, the Sacramento Air District
4 has reviewed many of those credit packages and
5 determined that some of them would be unacceptable
6 or that some of them might be acceptable but would
7 take them an extensive length of time to determine
8 whether they were acceptable. And, as a result,
9 we've had to make substitutions.

10 And that's the nature of the additional
11 changes that we've made, not because we have
12 initiated them, but because we are responding to
13 questions and comments from the air district.
14 That also explains why a complete package was not
15 submitted to the Commission, a subsequent complete
16 package until May 6th, because we were concerned
17 that we would simply be burdening the record with
18 multiple submittals while we were still trying to
19 work things out with the air district.

20 Where we're at now is, to the best of my
21 knowledge, we do not owe either the air district
22 or the Commission staff anything with respect to
23 air quality. We have complied with all of their
24 information requests on the offset packages.

25 In response to your earlier question,

1 Mr. Shean, we have not proposed any additional
2 CEQA type mitigation for this project because, to
3 this date, the Commission staff has not identified
4 any significant unmitigated impacts that would
5 warrant further mitigation. So we're talking
6 about a fairly straightforward offset package
7 here.

8 We are still waiting for the Sacramento
9 district to complete their determination as to
10 what the interpollutant offset ratio is going to
11 be for the various trades that we've proposed, as
12 Ms. Kennard indicated. I do have to say that in
13 my experience, I have never seen a district ask
14 for so much detail regarding an interpollutant
15 trade and so many detailed analyses regarding an
16 interpollutant trade as has been the case.

17 PRESIDING COMMISSIONER PERNELL: You're
18 referring to the air district.

19 SIERRA RESEARCH REP RUBENSTEIN: That's
20 correct. And that is one reason why this has
21 taken I believe as long as it has. They are
22 exploring this issue to a far greater level of
23 detail than, as I said, I've seen any other
24 district do.

25 Having said that, I don't see any reason

1 why those issues shouldn't be resolvable,
2 literally within a matter of days. Of course, if
3 the determination by the district is for a higher
4 offset ratio than we have anticipated, we will
5 have to go back to the drawing board one more time
6 and provide yet further offsets. That's happened
7 several times already. We are, if necessary,
8 prepared to do that. We have to comply with their
9 requirements. But we have to know what those
10 requirements are in order to be able to comply.

11 The other issue that's causing
12 substantial delay has to do with the procedure for
13 approving interdistrict trades. Again, to the
14 best of my knowledge and understanding, the
15 procedure we're dealing with in this case is
16 absolutely unique in that the air district is
17 requiring the interdistrict, and I'm not talking
18 about trades between different air basins. As you
19 recall, air basins are sort of larger geographic
20 entities and there are some fairly strict
21 limitations on how you can do trades between
22 different air basins. We're talking about trades
23 between air districts within a single air basin.

24 Imagine, for example, if you will, a
25 trade between Fresno County and Madera County,

1 which, because they're located within the same air
2 district and same air basin, it's transparent;
3 however, in Sacramento, because the Sacramento and
4 Placer County air districts are separate entities,
5 there is a separate approval process required.

6 The Sacramento Air District is requiring
7 us to have all of the county boards of supervisors
8 for the different air districts, including their
9 own, approve the trades before they will issue the
10 preliminary determination of compliance. And
11 again, that's a level of --

12 PRESIDING COMMISSIONER PERNELL: Is that
13 a normal course of business?

14 SIERRA RESEARCH REP RUBENSTEIN: No,
15 I've never seen that before. Typically, the
16 approvals for interdistrict trades are done either
17 prior to the final determination of compliance or,
18 in some cases, I believe in the case of High
19 Desert it was after the final determination of
20 compliance was issued.

21 And so this is, to my experience, again,
22 quite extraordinary. And one of the things that
23 we're asking the Commission today is for your help
24 in trying to expedite this process. As I said, we
25 believe we've provided to the air district

1 everything they need for them to complete their
2 analysis.

3 HEARING OFFICER SHEAN: Well, do you
4 regard this process as either illegal, dilatory or
5 inappropriate?

6 APPLICANT COUNSEL COHN: I'll speak to
7 illegal.

8 (Laughter.)

9 APPLICANT COUNSEL COHN: I'll let him
10 speak to the dilatory or inappropriate part.

11 HEARING OFFICER SHEAN: Well, it's just
12 the reality of the matter that you had a tough nut
13 to crack when you got here. Sacramento County in
14 our air district and the ones in the foothills are
15 all down, or upwind of the Bay Area. It creates
16 huge problems. We knew this was going to be tough
17 from the very beginning, and it is tough.

18 And you had to be creative in trying to
19 find where you could get the offsets and what you
20 could use and, as it is, you've only got the first
21 half of the project with offset packages submitted
22 and being analyzed. So if -- I mean, the reality
23 is, is this was going to be a difficult process
24 from the very beginning. We knew it, you knew it,
25 the AQMD knew it, and it's turned out to be what

1 everyone suspected but probably wished weren't
2 going to be the case.

3 APPLICANT COUNSEL COHN: Mr. Shean, it's
4 much more than that. Of course, we know the
5 substantive requirements are difficult, but we
6 have presented a proposal that would have met
7 those, and we believe still has. Now, what's
8 occurred is there is a moving target.

9 Just last year we had 2-to-1 offset
10 ratios from ROG to NOX. Now we're being told
11 perhaps it's 2.6 to 1. So, as you can see, those
12 kinds of moving targets are one thing. We're not
13 even here to talk about that aspect of it, because
14 that's something we're still trying to work out
15 with the air district, but the concern I have is
16 just because it's tough to ultimately resolve all
17 of these issues doesn't mean we should make it
18 even harder on ourselves by imposing new
19 procedural hurdles and trying to get all approvals
20 in advance of even the PDOC being issued.

21 This is the part that is unprecedented
22 and, frankly, unacceptable, because we do have a
23 process and I'll speak to the legal part. While
24 the air district keeps pointing to its
25 regulations, which nowhere say that the other air

1 districts have to approve these interdistrict
2 transfers in advance of the PDOC, nowhere in the
3 regulations does it say that, yet in the Warren-
4 Alquist Act, Public Resources Code Section 25519,
5 it clearly states that the final DOC should be
6 issued in six months. Now, who is following that
7 statute? That's what I would like to know.

8 PRESIDING COMMISSIONER PERNELL: Well,
9 have you pointed that out to the air district?

10 APPLICANT COUNSEL COHN: Of course, we
11 have. And the CEC regulations require the FSA to
12 be out or, excuse me, the final determination of
13 compliance, the FDOC to be out within 180 days.
14 We're at day 180 right now, and we're not even yet
15 seeing the PDOC. And it's not because we're not
16 complying with regulations. As I say, there is
17 nowhere in their regulations that requires these
18 board approvals.

19 They could put out a PDOC that says here
20 is what the applicant is proposing: If the air
21 districts involved approve these interdistrict
22 transfers, then they would have -- they would meet
23 this requirement. If they don't, they don't.
24 What would be wrong with putting out a PDOC that
25 says that?

1 But they're not doing it and what we're
2 pleading to you is either, if you can get them to
3 do it, we would prefer that; but if you do not
4 have the control over the air district to be able
5 to get them to do that, don't hold up the rest of
6 the process in the meantime. That's basically our
7 plea. Let's go ahead and resolve all the other
8 issues, because we will resolve these issues
9 ultimately. If we don't, we're not going to be
10 able to --

11 PRESIDING COMMISSIONER PERNELL: All
12 right, Mr. Cohn. I think I get your point, but
13 you need to know that air quality is not the only
14 area that your application is lacking. So let's
15 move forward.

16 APPLICANT COUNSEL COHN: Well, we'll
17 talk about each and every area.

18 PRESIDING COMMISSIONER PERNELL: I know
19 we will.

20 (Laughter.)

21 SIERRA RESEARCH REP RUBENSTEIN: If I
22 might, Commissioner Pernell, Mr. Shean, just to
23 clarify, I'm sure there are questions as to why
24 and Mr. Shean asked the question directly, why is
25 it that we have this disconnect in terms of the

1 timing, the district has in their regulations some
2 language that in concept is similar to language in
3 other district regulations, which requires that
4 prior to the issuance of a preliminary
5 determination of compliance, the applicant must
6 demonstrate that they have a clear path, if you
7 will, to completing their offset package.

8 That is not inconsistent with either the
9 letter or the intent of any other district I've
10 dealt with in power plant siting cases. What is
11 unique in this case is this district's
12 interpretation of that language, and their
13 interpretation of that language is they believe
14 the clear path must include formal governing board
15 approval for all of the interdistrict trades. And
16 so that's where the disconnect is between this
17 project and I think all of the other projects that
18 either I've worked on or that you've seen.

19 HEARING OFFICER SHEAN: Well, and that's
20 my point in the question. Is it illegal, dilatory
21 or just inappropriate?

22 APPLICANT COUNSEL COHN: All three.

23 HEARING OFFICER SHEAN: If you think
24 it's illegal and not following their regulations,
25 it's your burden to deal with them in whatever

1 administrative forum you have available to you,
2 because what do you want the Commission to do? If
3 you think they're misinterpreting their
4 regulations, what do you want us to do?

5 APPLICANT COUNSEL COHN: Let me be very
6 clear about what want you to do. Number one, we
7 would ask that you direct the air district to go
8 ahead and issue their PDOC as soon as possible.
9 Number two, if they are not going to issue that in
10 a timely manner as required under your
11 regulations, we ask that you still allow the PSA
12 to be issued so that we can move on with all the
13 other issues, even while we're dealing with the
14 air district, and not allow this to delay the
15 entire AFC process. That's our specific request
16 to you.

17 HEARING OFFICER SHEAN: Okay, but you do
18 understand, and I know you've been in this
19 business long enough and I know you know that we
20 have too, that the critical path item is going to
21 be the PDOC and the FDOC, and ultimately, whether
22 this proceeding is 12 months or something greater
23 than that, it's always going to be dependent upon
24 that.

25 APPLICANT COUNSEL COHN: We understand

1 that. But if we allow the PSA to be held up until
2 we work with these issues through, because we will
3 work these issues through, we're not going to be
4 able to offer it unless we do, let alone start
5 construction. But if we allow the air district to
6 dictate the process, not only for their PDOC but
7 for your AFC, we are going to see multiple delays
8 that compound themselves and end up delaying the
9 entire project and not just this one element.

10 What we're trying to do is outline to
11 you a more efficient way so that all of us can
12 make progress on all the other issues, even while
13 progress is being made on the DOC. It would be
14 much better if they went ahead and issued the
15 PDOC, but even if they don't, I think we all can
16 make progress in the meantime. So that's
17 basically what we're asking the committee to do.

18 HEARING OFFICER SHEAN: Okay. Can we
19 have the air district back up here for just a
20 second, please.

21 PRESIDING COMMISSIONER PERNELL: All
22 right --

23 HEARING OFFICER SHEAN: Go ahead.

24 PRESIDING COMMISSIONER PERNELL: -- just
25 one question, do you have all of the information

1 that you need from the applicant, in terms of
2 making a decision and this process is being held
3 up because you're looking for administrative
4 approval down the line. I mean, I'm trying to get
5 to the point of whether or not you have all of the
6 information through data requests that you need
7 from the applicant.

8 SMAQMD REP KENNARD: At this point in
9 time, if you have a means of directing us to do a
10 PDOC, at this point in time today our PDOC would
11 be a determination of non-compliance, if that
12 answers your question or not.

13 They have submitted interpollutant
14 ratios that are not agreed to at this point in
15 time. They have submitted an offset package
16 relying on those interpollutant ratios and there
17 are certain quarters that are short on varying
18 pollutants, based on the ratios they've even
19 supplied at this point in time. There are still a
20 number of issues to be worked through.

21 The reason we want the interdistrict
22 transfers before we go to PDOC, as Gary pointed
23 out our rules say, before -- for us to make a
24 determination of compliance we have to see there
25 is a path to the credits. There have been unique

1 situations in our area where some of the other
2 district boards have put on their -- in their
3 discussions for interdistrict, not allowing all
4 credits to go to another district.

5 They may hold a certain percentage of
6 them to only be used in their district, and that's
7 part of what they're relying on on their offset
8 package, and that's why we want some of these
9 things to line up prior to going to PDOC.

10 PRESIDING COMMISSIONER PERNELL: Okay.

11 HEARING OFFICER SHEAN: Let me ask you a
12 question about your draft that you said would be
13 available at the end of June.

14 SMAQMD REP KENNARD: Right.

15 HEARING OFFICER SHEAN: Is that going
16 to, format- and content-wise, look like your PDOC
17 just minus the approvals of these other district
18 boards?

19 SMAQMD REP KENNARD: Yeah, basically
20 what we'll have at the end of June, as long as
21 everything comes together that needs to come
22 together, is the full evaluation for the PDOC.
23 And the only piece that will be missing is
24 actually that final approval with the final notice
25 with the PDOC.

1 HEARING OFFICER SHEAN: Okay. So other
2 than that stamp of approval, if you will --

3 SMAQMD REP KENNARD: Right.

4 HEARING OFFICER SHEAN: -- that will
5 come from the other districts with regard to
6 interdistrict --

7 SMAQMD REP KENNARD: At that point we
8 think we'll have the other districts' approvals,
9 as long as they're able to get on the board for
10 the Yolo-Solano Air District in June, which we
11 don't know yet whether that's going to happen or
12 not.

13 So the only piece missing would be our
14 district board accepting those credits into the
15 district.

16 HEARING OFFICER SHEAN: Okay. So at
17 that point, you think you will have the other
18 districts, it's just your own district --

19 SMAQMD REP KENNARD: The one that's up
20 in question is Yolo-Solano.

21 HEARING OFFICER SHEAN: Okay. But
22 otherwise, it may be sufficiently complete that
23 our staff could conduct its analysis for purposes
24 of its PSA.

25 SMAQMD REP KENNARD: Correct.

1 HEARING OFFICER SHEAN: Okay.

2 APPLICANT COUNSEL COHN: Mr. Shean, the
3 Yolo-Solano district hearing is set for June 12th.

4 HEARING OFFICER SHEAN: All right.

5 STAFF COUNSEL HOLMES: Can I just ask a
6 brief procedural question? When is the notice,
7 the public notice for the PDOC going to be
8 published?

9 SMAQMD REP KENNARD: It would be noticed
10 at the end of July, after our July board hearing.

11 STAFF COUNSEL HOLMES: Okay, thank you.

12 PRESIDING COMMISSIONER PERNELL: Okay.

13 HEARING OFFICER SHEAN: Thank you very
14 much.

15 PRESIDING COMMISSIONER PERNELL: I want
16 to thank you, and I'm sure that, as Mr. Cohn has
17 said, that the issues will get worked out.

18 HEARING OFFICER SHEAN: That's a lot of
19 faith.

20 (Laughter.)

21 APPLICANT COUNSEL COHN: Well, they have
22 to, or we can't build and operate the plant. But
23 it's important to us to try to stay on schedule
24 too, because that's part of the reason we're
25 building this plant is to replace expiring

1 contracts in spring '05. And if we're not able to
2 get through this process in a timely manner, we'll
3 never meet that time line.

4 That's our concern, is trying to keep
5 everything on schedule.

6 PRESIDING COMMISSIONER PERNELL: No, it
7 is important to us to be on schedule as well, but
8 it is also important that we have a complete
9 record. And that's what this is about.

10 So let's move on.

11 HEARING OFFICER SHEAN: Let's move on to
12 biological resources from the staff, please.

13 PROJECT MANAGER CHEW: Yes, the next
14 item. Staff is looking for complete biological
15 surveys for the plant site itself and the 26-mile
16 natural gas pipeline alignment, as well as the
17 associated natural gas compressor stations.

18 At this time we have partial data --

19 HEARING OFFICER SHEAN: Let me just, as
20 these people are departing, thank you very much,
21 we appreciate it.

22 PROJECT MANAGER CHEW: We have partial
23 data regarding biological resources; however,
24 complete spring surveys have not been submitted to
25 the Energy Commission at this time.

1 And then as well as we would also like
2 to have a biological assessment with mitigation
3 measures filed with the US Fish and Wildlife
4 Service and the National Marine Fishery Service
5 from SMUD as well.

6 HEARING OFFICER SHEAN: Well, that's --
7 Let me just talk about that a little bit, because
8 you've indicated on page two of your analysis that
9 you're looking for a draft biological opinion from
10 these same federal agencies. Now, I assume the
11 biological assessment is preliminary to the
12 biological opinion, correct?

13 PROJECT MANAGER CHEW: Yes, it is.

14 HEARING OFFICER SHEAN: And, at least
15 with regard to the biological assessment that
16 there is no public comment period attendant to
17 that, but am I correct that there is one as to the
18 biological opinion and/or review by the Federal
19 EPA, or at least review by the Federal EPA --

20 PROJECT MANAGER CHEW: Yes, that's true.

21 HEARING OFFICER SHEAN: -- and maybe a
22 public comment period?

23 PROJECT MANAGER CHEW: For the
24 biological opinion.

25 HEARING OFFICER SHEAN: Right, okay.

1 What is the status of anything from Fish
2 and Wildlife or --

3 PROJECT MANAGER CHEW: I understand that
4 SMUD has had conversations and meetings with Fish
5 and Wildlife Service; however, they have not filed
6 any documentation regarding the biological species
7 for this project.

8 PRESIDING COMMISSIONER PERNELL: Fish
9 and Wildlife has not, or the applicant?

10 PROJECT MANAGER CHEW: The applicant has
11 not submitted anything to Fish and Wildlife
12 Service regarding surveys or the biological
13 assessment.

14 HEARING OFFICER SHEAN: Okay. Why don't
15 we switch to the applicant here and get some
16 information from you.

17 APPLICANT COUNSEL COHN: Yes, let me
18 respond directly to that last point when I talked
19 a little more generally about this area.

20 The particular issue that was just
21 referenced, the Army Corps of Engineers has to
22 submit the biological assessment to trigger the
23 review that's being discussed with US Fish and
24 Wildlife. We don't have direct control over Army
25 Corps of Engineers. I doubt anybody else does,

1 frankly, other than the director of that agency.

2 But what we are doing is working with
3 them to give them all the information that they
4 need so that they can submit that.

5 PRESIDING COMMISSIONER PERNELL: So
6 that -- Let me stop you -- that hasn't been done.

7 APPLICANT COUNSEL COHN: Well, we
8 have --

9 PRESIDING COMMISSIONER PERNELL: Do the
10 Army Corps of Engineers have all of the
11 information from the applicant that they need to
12 get that assessment done?

13 APPLICANT COUNSEL COHN: With the
14 exception of spring surveys, that is correct.

15 Let me explain how the relevance of
16 these spring surveys, in terms of schedule, play
17 out. First of all, the way you design a pipeline,
18 you have to sort of narrow it down. You don't
19 just pick your route right up front. We picked a
20 route and tried to refine it during the course of
21 this proceeding to avoid, wherever possible, as
22 many impacts to species, particularly any rare and
23 endangered species, but also to try to avoid
24 impacts to property owners along the route, to
25 other cultural resources and so on. So it's a

1 very fine process.

2 We are further along, I can tell you, at
3 this point, having just been through this six
4 years ago with our pipeline, the 50-mile pipeline
5 from Winters to Sacramento, we are further along
6 now than we were at the FSA stage at that point.
7 I think, once again, what's occurring is there is
8 an expectation for certain issues to be resolved
9 completely at a time in the process when it really
10 can't be done.

11 We know there are species out there.
12 We've designed this plant to try to minimize it.
13 The surveys will tell us exactly how many -- For
14 example, the California tiger salamander or the
15 burrowing owls, we know they're out there. We've
16 tried to do our best to minimize the impact. But
17 at some point --

18 PRESIDING COMMISSIONER PERNELL: So you
19 have a mitigation plan for those species?

20 APPLICANT COUNSEL COHN: Oh, absolutely,
21 absolutely.

22 PRESIDING COMMISSIONER PERNELL: And
23 that's been filed?

24 APPLICANT COUNSEL COHN: We have
25 indicated, even as far back as when the AFC was

1 filed, what our mitigation would be. Now, the
2 issue of, for example, tradeoffs or --

3 PRESIDING COMMISSIONER PERNELL: Let me
4 stop you.

5 APPLICANT COUNSEL COHN: Yes.

6 PRESIDING COMMISSIONER PERNELL: You
7 have a mitigation plan for biological resources
8 that has been filed.

9 APPLICANT COUNSEL COHN: We filed back
10 when we filed the AFC, and we presented
11 additionally 46 additional data responses. Now,
12 what we don't know is what the agencies, the
13 regulatory agencies such as Corps of Engineers and
14 Fish and Wildlife, Fish and Game, what they will
15 do.

16 For example, when you go, you come near
17 a wetland area or a vernal pool, we try to avoid
18 those wherever possible. In those areas where you
19 just cannot avoid having some kind of impact, the
20 traditional mitigation is to obtain and purchase
21 habitat that would replace that at a certain
22 ratio. And, of course, we have proposed what we
23 think is appropriate, but the regulatory agencies
24 may propose something different.

25 We've even identified, Commissioner

1 Pernell, that we have land at Rancho Seco on our
2 property there that could be set aside as
3 mitigation for some of these species, depending on
4 the level that are impacted. And that's where the
5 surveys will help establish what the absolute
6 number is, in terms of acreage affected or the
7 particular species affected.

8 But we've gone into this all along with
9 the attitude of trying to minimize those impacts.
10 Where they cannot be avoided at all, then we
11 absolutely would mitigate in terms of acquiring
12 off-site habitat at a ratio to be approved by the
13 regulatory agencies, as well as mitigation to
14 ensure that some of these species can actually
15 regroup and survive, even at the site where we've
16 constructed, keeping in mind we're going to put
17 soil back over the trench once we're done building
18 the pipeline.

19 PRESIDING COMMISSIONER PERNELL: All
20 right. Are there any other agencies that are
21 dependent upon data for the spring surveys? I
22 mean, the data they need for the spring surveys
23 that you mentioned, do they have it?

24 APPLICANT COUNSEL COHN: Not for the
25 spring surveys. We did some spring surveys last

1 year before we had the exact delineation of the
2 pipeline, so we know the corridor, what basically
3 is in there, but now it's a question of fine-
4 tuning. And the surveys that will be done this
5 spring will fine-tune down to the point where we
6 can have a more precise mitigation package and
7 ensure approvals of the appropriate agencies.

8 But certainly at this stage of where we
9 are, keeping in mind we wouldn't actually start
10 construction until next January, we I think are
11 right on track, in fact, ahead of where we were,
12 as I mentioned, six years ago, when we planned and
13 licensed the 50-mile pipeline that we're
14 connecting to.

15 PRESIDING COMMISSIONER PERNELL: Okay.

16 HEARING OFFICER SHEAN: Well, what in
17 your opinion will get these federal agencies
18 moving to the point where they can inform us of
19 what they're required --

20 APPLICANT COUNSEL COHN: Well, they are
21 moving. We anticipate, you know, in looking
22 through our time lines on these different permits,
23 we anticipate that, and correct me if I'm wrong,
24 Kevin -- Kevin Hudson, our project manager -- that
25 all of these will be obtained prior to

1 certification and many even prior to the time you
2 would even issue a proposed decision.

3 In fact, many of them will even be
4 obtained before we even get to a hearing. But
5 keep in mind that in the past that hasn't been
6 required that every one of those permits
7 necessarily has to occur prior to the PSA or FSA
8 being issued.

9 HEARING OFFICER SHEAN: Well, let's
10 assume our public process is to inform the public
11 of potential impacts and their mitigation.

12 APPLICANT COUNSEL COHN: Right.

13 HEARING OFFICER SHEAN: When will we
14 have, based upon your understanding of the work by
15 the federal agencies, their first cut of the
16 potential mitigation measures they feel are
17 appropriate for matters within their jurisdiction?

18 APPLICANT COUNSEL COHN: Well, we're
19 consulting with the Corps of Engineers right now,
20 for example, on the part that they review. They
21 expect to start their review this week on the
22 wetland, for example, under Section 404 --

23 HEARING OFFICER SHEAN: Okay.

24 APPLICANT COUNSEL COHN: -- start this
25 week and finish July 13th.

1 The Section 10, Crossing Evocable Water
2 sections, they started this past week and we
3 expect them to be finished July 9th. You know, I
4 could go on. There are other -- There's
5 Incidental Take, Section 7, US Fish and Wildlife
6 would begin June 14th. I'm not sure when that --
7 Actually, that one I believe doesn't occur until
8 after certification.

9 Some of these they can't actually do
10 until you're much further along than the
11 permitting process at the Energy Commission.

12 HEARING OFFICER SHEAN: But these
13 federal agency matters, then, are coming in
14 sometime in mid-July?

15 APPLICANT COUNSEL COHN: Yes, I believe
16 most of them. Another Incidental Take,
17 Section 2081, Department of Fish and Game, that's
18 the California state level --

19 HEARING OFFICER SHEAN: Right.

20 APPLICANT COUNSEL COHN: -- has begun
21 and should be done by July 9th.

22 And let me indicate we have started
23 consultation with US Fish and Wildlife, so I think
24 really these are moving along quite well and we
25 have a good working relationship on this. We may

1 want to schedule another workshop, you know, after
2 the PSA is issued to check on the progress of
3 these things and hopefully have most of this
4 wrapped up that needs to be wrapped up prior to
5 even the FSA being issued.

6 HEARING OFFICER SHEAN: Well, what is
7 the rationalization of having staff guess at what
8 the federal mitigation is, instead of having it in
9 hand for the PSA?

10 APPLICANT COUNSEL COHN: Well, I don't
11 think they should guess. I think what they could
12 do --

13 HEARING OFFICER SHEAN: Well, where are
14 they going to get it?

15 APPLICANT COUNSEL COHN: -- in the PSA
16 they can talk about where the pipeline is
17 proposed, and, in the case of land down by the
18 ranch, we certainly know where that is. And they
19 can talk about the status of all the different
20 permit applications at the different agency
21 levels.

22 They can talk about the species that
23 we've already --

24 PRESIDING COMMISSIONER PERNELL: Have
25 you talked about that to them?

1 APPLICANT COUNSEL COHN: Yes. Yes.

2 PRESIDING COMMISSIONER PERNELL: And
3 they have documentation on everything you just
4 described?

5 APPLICANT COUNSEL COHN: That's my
6 understanding, yes.

7 STAFF COUNSEL HOLMES: Well, as we
8 pointed out before, we're still missing survey
9 information. That's kind of the area, that's what
10 we start with.

11 APPLICANT COUNSEL COHN: Yeah.

12 STAFF COUNSEL HOLMES: And that's the
13 basis for moving forward with trying to determine
14 what type of mitigation, if it's a land issue,
15 what types of ratios are appropriate. And we try
16 to work with the other agencies that are working
17 on the same issues so that we don't end up with
18 inconsistent or contradictory results.

19 And without that basic level of
20 information of surveys, knowing what's out there,
21 it's hard to get started on that process. And
22 apparently, the federal agencies are reacting the
23 same way the staff is.

24 PRESIDING COMMISSIONER PERNELL: And
25 that is that they don't have the necessary

1 information to do the surveys?

2 STAFF COUNSEL HOLMES: We have --

3 PRESIDING COMMISSIONER PERNELL: With
4 the exception of the spring surveys?

5 STAFF COUNSEL HOLMES: The spring survey
6 data that we're missing, and that tells us and
7 tells the federal agencies what types of habitat
8 are out there, what kinds of species are out
9 there, and at what level of abundance, so that we
10 can begin to craft working together with the
11 federal agencies, an identification of what the
12 impacts are, and what the mitigation will be.

13 But that survey level data is -- the
14 survey data is what we start with, and we're still
15 missing parts of that. We do have some of it, but
16 there are parts that we are missing.

17 PRESIDING COMMISSIONER PERNELL: Should
18 that have been undertaken last spring?

19 STAFF COUNSEL HOLMES: We would probably
20 not be discussing this today if it had been
21 undertaken last spring.

22 APPLICANT COUNSEL COHN: Well, I beg to
23 differ. Let me suggest to you, if we had tried to
24 do the kind of detailed engineering to have the
25 exact right-of-way last spring --

1 PRESIDING COMMISSIONER PERNELL: No, no,
2 she's just talking about a baseline survey for the
3 spring, the spring survey which, in my mind, and
4 I'm not an expert at this like you are, see, but
5 in my mind, if it takes a spring survey and you
6 miss the window, then you've got to wait until the
7 window comes around again.

8 APPLICANT COUNSEL COHN: No, we didn't
9 miss it. That's I think the confusion here.

10 We did spring surveys last spring at the
11 level of detail that we knew about the pipeline
12 last spring. Now, as the process moves on partly
13 in response to concerns that are raised by the
14 public, by staff, by others, other regulatory
15 agencies, we've refined the right-of-way. We've
16 refined it down to the point where we know within
17 less than a hundred feet, where it's -- in some
18 cases less than that -- exactly where it's going
19 to go.

20 And so what we're talking about is a
21 question of fine-tuning. We did surveys, and I
22 think it's -- Certainly, we know, I think all the
23 regulatory agencies know the types of species that
24 are likely to be right in the area where we, or in
25 the vicinity. What we don't know is in the exact

1 area that we are going to put our pipeline, the
2 exact level that we're going to find and whether
3 we find every species we know is in the
4 vicinity --

5 ADVISOR TOWNSEND SMITH: Did you do
6 spring surveys this year, Steve?

7 APPLICANT COUNSEL COHN: I'm sorry?

8 ADVISOR TOWNSEND SMITH: Did they do
9 spring surveys this year?

10 PROJECT MANAGER HUDSON: Yes.

11 APPLICANT COUNSEL COHN: Yes.

12 PROJECT MANAGER HUDSON: They're not
13 finished.

14 ADVISOR TOWNSEND SMITH: But they're not
15 finished.

16 APPLICANT COUNSEL COHN: That's the
17 issue, is completing --

18 ADVISOR TOWNSEND SMITH: When are they
19 going to be finished? When will these surveys be
20 finished?

21 PROJECT MANAGER HUDSON: June 10th.

22 APPLICANT COUNSEL COHN: June 10th for
23 the California tiger salamander --

24 PROJECT MANAGER HUDSON: And the
25 burrowing owls and rare plant species.

1 APPLICANT COUNSEL COHN: -- and
2 burrowing owls and what else?

3 PROJECT MANAGER HUDSON: And rare plant
4 species.

5 APPLICANT COUNSEL COHN: -- and rare
6 plant species.

7 PRESIDING COMMISSIONER PERNELL: All
8 right, but June 10th is the last date you should
9 have all of your surveys done.

10 APPLICANT COUNSEL COHN: Correct. And
11 those, as I say, are fine-tuning down to the
12 points that we can really be specific about which
13 species we will directly impact rather than just
14 likely impact.

15 PRESIDING COMMISSIONER PERNELL: All
16 right.

17 HEARING OFFICER SHEAN: Is it
18 appropriate to characterize your last year's
19 spring survey data as a corridor and this year's
20 as more or less a route?

21 APPLICANT COUNSEL COHN: Well, this year
22 is more than a route -- Well, if you're using the
23 term "route" to mean very specific right-of-way,
24 yes, whereas last year the corridor at that
25 time --

1 Kevin, about how wide was the corridor
2 last spring?

3 PROJECT MANAGER HUDSON: About one
4 thousand feet.

5 APPLICANT COUNSEL COHN: Last spring we
6 were looking at a corridor of about 1,000-foot
7 width. So we had actually done, even preliminary
8 to doing those spring surveys last year, had done
9 other, more corridor-level to narrow it down to a
10 thousand feet, and then did surveys within that
11 thousand feet.

12 PRESIDING COMMISSIONER PERNELL: Does
13 staff want to respond to --

14 CEC STAFF HAUSSLER: I'm Bob Haussler,
15 Environmental Office. Just a comment, in regards
16 to the discussion I might be able to shed some
17 light on the level of surveys. And what the
18 agencies need now, including ourselves, is
19 specific information on what the impacts of the
20 project will be.

21 The federal agencies, in consultation
22 with, say, the Corps or with the applicant,
23 dependent upon permits allowed for effects on
24 endangered species, protected habitat, need
25 specific information so that they can understand

1 at the conclusion of their process what the take
2 will be, whether avoidance is possible, and if
3 it's allowed to move forward what the mitigation
4 will be, if avoidance isn't possible.

5 The level of detail for surveys is done
6 based on protocol provided by both State Fish and
7 Game and the federal agencies, and usually when
8 you have a fairly wide corridor you do general
9 surveys to understand the potential for impacts,
10 to kind of bracket what the route of the project
11 might be and what the potential impacts would be.
12 But it's not at a level typically that would allow
13 the agencies to move forward on consultation
14 resulting in a biological opinion.

15 Now, from our own staff's standpoint, as
16 opposed to, say, the federal agencies, and the
17 state agency to protect endangered species, we
18 need to work with them and understand their
19 acceptance of first the level of detail of the
20 surveys and what mitigation would be necessary if
21 the project was allowed to go forward as proposed.

22 So staff is at a point where it is in
23 need of receiving information on all the project
24 components that have impacts of this nature, and
25 in order for us to come to conclusions on what

1 those agencies are doing and making progress, it
2 is necessary certainly for a PSA. Otherwise, we
3 would not have a sufficient PSA. Adequate
4 progress is crucial at this stage in order to have
5 a document, an analysis for you, the committee, in
6 order to direct further information for hearings.

7 And so we're interested in getting the
8 information SMUD has committed to provide, and it
9 is essential for us to receive that.

10 HEARING OFFICER SHEAN: Let me ask you
11 about this PSA versus FSA thing. If they
12 submitted to you corridor-level surveys and we
13 pretty much accept, based upon their submittal and
14 the Commission's 25 years plus of experience
15 dealing with this, that the range of mitigation
16 that is likely is avoidance on the one hand and
17 potentially compensatory habitat and some other
18 things, why isn't it appropriate that the PSA, for
19 example, on the basis of this corridor level of
20 survey information and the range of mitigation
21 that we already know, put out a PSA at that level
22 then await the federal determinations for the
23 refinement of your FSA?

24 CEC STAFF HAUSSLER: Normally, what the
25 staff would expect to provide is recommended

1 conditions of certification. And in order to do
2 so we would need to understand what the level of
3 impacts are, not, for instance, best-case worst-
4 case impacts. In other words, staff would have to
5 recommend and assume what worst-case is, and that
6 really is a very difficult level of detail for
7 both the staff and the committee to work with in
8 terms of reaching conclusions on what is and isn't
9 acceptable for the project.

10 Also, the agencies who will be receiving
11 this document would not be instructed, in terms of
12 what limitations the staff feels are appropriate
13 to protect species. We would not know what
14 possibilities exist to reduce those impacts to
15 acceptable levels. And so the negotiation between
16 staff and discussions on this with the agencies
17 would not reach its -- that would be premature to
18 report on that for the PSA, and all I could do is
19 report on progress, not on any conclusions.

20 PRESIDING COMMISSIONER PERNELL: So you
21 can report on progress in the PSA, but not
22 conclusions; is that what you're saying?

23 CEC STAFF HAUSSLER: If, in fact, we
24 don't have the information nor the specificity
25 that's necessary to actually identify conditions

1 of certification.

2 HEARING OFFICER SHEAN: Anything more on
3 this?

4 APPLICANT COUNSEL COHN: Well, I think
5 what you're hearing is that they can't put out the
6 FSA level of detail at the PSA stage, and we
7 didn't expect that they would.

8 STAFF COUNSEL HOLMES: That's not a
9 correct interpretation of what we're saying. I
10 think what Mr. Haussler is saying is that we need
11 to have some sense of what the actual likely
12 impacts are, and that without the survey detail of
13 the appropriate level, we can't do that.

14 When he says the PSA would be a progress
15 report, it would be simply a recitation of what
16 data had been submitted, what data hadn't been
17 submitted, and what the other agencies were doing.
18 There wouldn't be a discussion of what the
19 potential impacts are, and what the potential
20 range of mitigation measures might be.

21 HEARING OFFICER SHEAN: Okay. Let's not
22 re-hoe this ground.

23 PRESIDING COMMISSIONER PERNELL: Is
24 there anyone here from Fish and Wildlife or other
25 agencies to address this issue?

1 APPLICANT COUNSEL COHN: I just might
2 want to indicate, I don't know if the woman is on
3 the line who lived near Winters, but we might want
4 to at least just indicate, in case she is
5 wondering how this would affect what we're talking
6 about near Winters. Is she still on the line?

7 TELEPHONIC SPEAKER TALL: I am.

8 APPLICANT COUNSEL COHN: Okay. I just
9 wanted to indicate we're not building a new
10 pipeline anywhere near Winters. The pipeline from
11 Winters to Sacramento was built approximately six
12 years ago. What we are doing is building a power
13 plant down near the old Rancho Seco project, and
14 building an extension of our existing pipeline,
15 all within Sacramento County. None of it is
16 within Yolo County.

17 The only part that would be in Yolo
18 County would be if we build a second 500-megawatt
19 phase, which we are not doing initially but would
20 like the right to be able to do ultimately. We
21 would need to build a compressor station -- two of
22 them, actually -- one near the end of the existing
23 pipeline, and that's what would be near Winters
24 would just be the compressor station.

25 TELEPHONIC SPEAKER TALL: Well,

1 unfortunately that's why I was concerned. That
2 happens to be just within probably a thousand feet
3 of my home. And I hadn't really been provided any
4 information on how that was going to affect
5 residents within the area.

6 APPLICANT COUNSEL COHN: What we would
7 like to offer to do is come out and meet with
8 this, I didn't hear your name, but we would like
9 to come out and meet and give you as many details
10 as you need on what's involved.

11 TELEPHONIC SPEAKER TALL: Well, I would
12 appreciate that.

13 APPLICANT COUNSEL COHN: All right. Do
14 we have the name and phone?

15 PROJECT MANAGER HUDSON: We have her
16 name, Steve.

17 APPLICANT COUNSEL COHN: Okay.

18 PRESIDING COMMISSIONER PERNELL: All
19 right.

20 APPLICANT COUNSEL COHN: I just want to
21 be sure I know what she --

22 PRESIDING COMMISSIONER PERNELL: Steve,
23 you've got to do your own work. This is a
24 hearing, all right?

25 APPLICANT COUNSEL COHN: All right.

1 PRESIDING COMMISSIONER PERNELL: So if
2 you're going to do outreach to the community, then
3 you need to take that away from this hearing.

4 All right. So let's --

5 HEARING OFFICER SHEAN: But let me point
6 out, it raises another clear signal, and we talked
7 about this from the beginning of the process, that
8 so long as you combine the two phases and you
9 don't have the air quality offsets for the second
10 phase and you have other elements of the project
11 that are required for the second phase but are not
12 required for the first and you put them all
13 together, you are slowing down the progress on
14 phase one by necessarily combining certain
15 elements that are necessary for phase two.

16 Now, we could do a CEQA review that
17 would contemplate some expansion of the project
18 and then have a separate proceeding for phase two,
19 but by doing this the way it's being done, it is
20 necessarily -- and it's by your choice -- it is
21 necessarily slowing down the schedule.

22 APPLICANT COUNSEL COHN: Well, the only
23 facilities that are additional for the second 500
24 megawatts, other than at the site itself -- I
25 mean, we've done the full analysis of the power

1 plant site -- the pipeline doesn't change --

2 HEARING OFFICER SHEAN: I just think
3 it's appropriate to state it for the record
4 because I think it's a fact.

5 APPLICANT COUNSEL COHN: Yeah, the only
6 difference, in terms of additional land or
7 impacts, would be the compressor stations that we
8 just spoke about, and then with respect to air
9 quality, obviously we would have to get a -- go
10 through a whole DOC process. And I think what
11 we're trying to avoid is having to go through a
12 lengthy lead time for the second phase when all
13 the information other than air quality is known
14 right now.

15 HEARING OFFICER SHEAN: Okay.

16 PRESIDING COMMISSIONER PERNELL: Or
17 maybe, I didn't -- Did you say all of the
18 information except air quality is known for this
19 application?

20 APPLICANT COUNSEL COHN: Will be at the
21 time you issue the certification --

22 PRESIDING COMMISSIONER PERNELL: Well,
23 that's something different than you just said,
24 Steve.

25 APPLICANT COUNSEL COHN: Well, let me --

1 Okay. The level of information we've provided you
2 on the project includes the entire thousand
3 megawatts, including what we've provided for air
4 quality. What we've heard from the air district
5 is they will not consider the second phase, the
6 second 500 megawatts, so we've agreed that we'll
7 just do a separate DOC process for that.

8 PRESIDING COMMISSIONER PERNELL: All
9 right. That was just a matter of information to
10 the applicant. We don't have to get into --

11 If you want to go forward with your
12 compliance projects, that's your right. We're not
13 trying to persuade you to do otherwise.

14 HEARING OFFICER SHEAN: Okay. Why don't
15 we move to cultural resources.

16 PROJECT MANAGER CHEW: Cultural
17 resources. Staff feels that a majority of the
18 pipeline alignment has been surveyed for cultural
19 resources; however, there are some portions along
20 on and off the field that were not surveyed, and
21 so staff does not have survey information for that
22 portion of the pipeline alignment. And it is our
23 understanding that SMUD, in discussions with our
24 staff, will be doing some testing out in that area
25 for cultural resources, and that has not been

1 completed yet at this time.

2 In addition, there are some known
3 culturally sensitive areas that require presence-
4 absence testing before the impacts of the proposed
5 trenching for the alignment would occur to those
6 resources, and that has not been performed yet at
7 this time either.

8 PRESIDING COMMISSIONER PERNELL: So
9 you're saying that testing has begun?

10 PROJECT MANAGER CHEW: We have discussed
11 how the testing would be done, but the actual
12 testing has not been completed yet at this time.
13 It has not started.

14 PRESIDING COMMISSIONER PERNELL: And
15 then does this also affect some Native American
16 tribes?

17 PROJECT MANAGER CHEW: Yes. The sites
18 that -- There are some Native American sites that
19 we are concerned about, and then there are some
20 historic sites that we want to verify their
21 significance.

22 PRESIDING COMMISSIONER PERNELL: Do they
23 have to sign off on some type of --

24 PROJECT MANAGER CHEW: What staff is
25 proposing is that the testing that occurs is done

1 in coordination with the Native American groups,
2 and if there is a Native American monitor to be
3 present at the time of the testing, we are
4 encouraging SMUD to have that coordinated and work
5 through with the Native American tribes. And SMUD
6 at this time has agreed to do that.

7 HEARING OFFICER SHEAN: Okay. Now --
8 I'm sorry --

9 PRESIDING COMMISSIONER PERNELL: No, go
10 ahead.

11 HEARING OFFICER SHEAN: -- for a PSA
12 level of information, do you anticipated, based
13 upon what you might consider the worst-case in
14 terms of what might be found through the testing,
15 that the conditions that have been used by the
16 staff in the past with regard to known and unknown
17 cultural resources would need to be augmented to
18 address the situation for this particular project?

19 PROJECT MANAGER CHEW: The worst-case
20 scenario would be if there was a Native American
21 site that was very significant and the proposed
22 alignment was to trench through, possibly damaging
23 the site, and perhaps -- that was a significant
24 unavoidable impact -- perhaps staff would
25 recommend altering the alignment to avoid a

1 certain section.

2 HEARING OFFICER SHEAN: Well,
3 presumably, if you're talking about plus or minus
4 a hundred feet, you probably ought to be able to
5 get around that. So for the PSA level now is what
6 we're trying to talk about, whether or not you
7 need to have these presence-absence testing
8 results in your pocket --

9 PROJECT MANAGER CHEW: Without knowing
10 what is on the site or across the alignment, it
11 would be difficult for staff to determine what the
12 impact would be, how significant the impact would
13 be, and to recommend the appropriate mitigation.

14 If we were to recommend curating the
15 items, if we were to recommend avoidance, those
16 types of details couldn't be determined at the PSA
17 level without the testing information.

18 PRESIDING COMMISSIONER PERNELL: And
19 you're expecting that in late May?

20 PROJECT MANAGER CHEW: SMUD is
21 determining when they can have that testing done.
22 They have their consultants they need to work
23 with.

24 PRESIDING COMMISSIONER PERNELL: All
25 right. Applicant?

1 APPLICANT COUNSEL COHN: Yeah. First of
2 all, let's keep in mind the staff, or SMUD has
3 proposed a detailed cultural resource monitoring
4 and mitigation plan, so that wherever a finding is
5 made we will go through a protocol that will be
6 agreed to by both staff, applicant and blessed by
7 the Commission that would indicate what steps we
8 would go through to avoid or, if avoidance is
9 impossible, to preserve whatever can be preserved.

10 Even with the presence and absence
11 testing, which, by the way, we had scheduled a few
12 weeks ago but had to reschedule due to a death in
13 the Miwok tribe, this does not guarantee that we
14 won't make additional finds during construction.
15 You know, monitoring is a requirement, with or
16 without the presence-absence testing. So, for
17 example, if that was done at a particular site and
18 nothing was found but then during construction
19 several burials were uncovered, we would still
20 need to deal with that and properly handle all of
21 that.

22 So I think ultimately we do have what we
23 need to move forward with the PSA, and then for
24 the FSA you'll have the results from the presence-
25 absence testing. We have submitted 25 data

1 responses, and so we're down to, you know,
2 investigating four sensitive areas at this point.
3 Now, we wouldn't know that if we hadn't been
4 through a lot of work to get to this point.

5 PRESIDING COMMISSIONER PERNELL: You
6 know, at the end of this I want to address the
7 data responses for the benefit of your board, so
8 we'll get to that. I guess my question was the
9 work is expected to be completed in May, mid-May
10 or late May.

11 APPLICANT COUNSEL COHN: No, I would say
12 more like June.

13 PRESIDING COMMISSIONER PERNELL: So
14 that's a slip on -- I've got in my information
15 completed in late May. Was that your original
16 time line and that has slipped?

17 APPLICANT COUNSEL COHN: Well, we have
18 to schedule this with the Miwok tribe, so we need
19 to do that in June.

20 PRESIDING COMMISSIONER PERNELL: Okay,
21 all right.

22 HEARING OFFICER SHEAN: All right.
23 Let's go to transmission system engineering.

24 Staff is indicating that the applicant
25 had submitted information to it on May 10th, which

1 has not yet been analyzed --

2 PROJECT MANAGER CHEW: True. A large
3 data response was submitted on Friday in the
4 afternoon and staff has not had time to analyze
5 that to determine whether or not additional
6 information is needed.

7 HEARING OFFICER SHEAN: Okay. Now, in
8 the matter of the transmission system evaluation,
9 does the staff -- What role, if any, does the Cal
10 ISO have in reviewing that material?

11 PROJECT MANAGER CHEW: SMUD is not a
12 party, and SMUD can clarify, is not a part of the
13 Cal ISO, and --

14 HEARING OFFICER SHEAN: Okay. So it is
15 not staff's intention to bring the Cal ISO into
16 its review.

17 PROJECT MANAGER CHEW: No. We might ask
18 for their opinion if they would like to provide
19 one, if they would like to review the data.

20 HEARING OFFICER SHEAN: All right.

21 Anything from you, Mr. Cohn?

22 APPLICANT COUNSEL COHN: Yes. I think
23 that the comments that we provided in our written
24 statements adequately addresses, basically given
25 the uncertainty of the Rio Linda, Colusa, and

1 Roseville projects. Staff has requested that
2 additional transmission sensitivity studies be
3 run.

4 And in response to data request set
5 four, we did prepare a stability study, fault duty
6 impact study, and voltage support sensitivity
7 study, which have been submitted. And in each of
8 these studies, we determined there are negligible
9 impacts to the system. And, in fact, the Cosumnes
10 project would provide significant local voltage
11 support without any adverse voltage support
12 impacts.

13 We also submitted two prior studies to
14 the Energy Commission, one of which encompasses
15 the worst-case under very unlikely conditions.
16 And even the worst-case study showed very minimal
17 impacts with all power plants operating but does
18 not include, let me indicate, if all of those
19 projects did go forward that I mentioned, then
20 they would have their own mitigation plans which
21 we have no idea until they're certified what those
22 would be.

23 So I think, given the situation we've
24 provided you I think the best information that's
25 really going to be available probably at any time

1 during this proceeding.

2 HEARING OFFICER SHEAN: Okay. Let's
3 move to waste management, then.

4 PROJECT MANAGER CHEW: Staff has
5 coordinated with the Department of Toxic
6 Substances Control on this project as we do with
7 all projects, and the Department of Toxic
8 Substances Control has some significant concerns
9 regarding the natural gas pipeline alignment. The
10 alignment goes through --

11 PRESIDING COMMISSIONER PERNELL:
12 Regarding the alignment?

13 PROJECT MANAGER CHEW: Yes, regarding
14 the 26-mile alignment.

15 PRESIDING COMMISSIONER PERNELL: Okay.

16 HEARING OFFICER SHEAN: Most
17 particularly along the railroad runway; is that
18 correct?

19 PROJECT MANAGER CHEW: Because of some
20 known practices historically with railroad
21 alignments, DTSC is concerned that there might be
22 some contaminated soils associated with trenching
23 by the Union Pacific rail line.

24 And additionally, the pipeline alignment
25 goes through some ag fields and so the historic

1 use of some of the ag fields, would like to be
2 investigated by DTSC as well as any industrial
3 areas that the pipeline is proposed to go along,
4 which are few along this alignment. But the
5 majority is the railroad right-of-way, which DTSC
6 is most concerned with.

7 We have a workshop scheduled for
8 tomorrow to go over these issues with DTSC and the
9 applicant to see if we can come to a resolution on
10 what other data DTSC would like to see and staff
11 would like to see.

12 PRESIDING COMMISSIONER PERNELL: So
13 theoretically, this issue can get resolved
14 tomorrow, you think?

15 STAFF COUNSEL HOLMES: The informational
16 needs may get resolved tomorrow, but we don't know
17 when the additional information will be coming in
18 at this point. DTSC has been pretty clear they
19 want more detailed information than they have.
20 They have found that what's been submitted to date
21 is not sufficient.

22 The purpose of tomorrow's meeting is to
23 try to reach agreement about what additional
24 information will be required, but we don't have an
25 idea at this point of how long it would take to

1 provide that.

2 PRESIDING COMMISSIONER PERNELL: Well,
3 can you provide the committee with a report of the
4 outcome of that meeting?

5 PROJECT MANAGER CHEW: Yes, we will.

6 APPLICANT COUNSEL COHN: Yes,
7 Commissioner, the only thing I'd add to that, and
8 I am hopeful we will resolve this tomorrow, the
9 dispute at this point revolves around whether to
10 do a phase one study of the entire pipeline. We
11 actually talked about this at a workshop earlier
12 this year, I think a couple of months ago, and we
13 thought there was an understanding we would do a
14 phase one environmental of the power plant site
15 but not of the entire pipeline. That would be
16 unprecedented.

17 We're not aware of any other major
18 pipeline that had to do that kind of study. We
19 certainly didn't on our pipeline, but more
20 recently there have been pipeline applications
21 before this Commission that have not been required
22 to do that. So we thought that was inappropriate.

23 But I think as we talk with the agencies
24 involved that we can work out the level of
25 analysis that is appropriate, that we can get

1 them. Keep in mind that we're not building this
2 right next to -- it's about 35 feet from the rail
3 line, the parts that go along the rail right-of-
4 way, and so it minimizes the likelihood of finding
5 hazardous waste materials. But, to the extent
6 that we do, there would be protocol which we have
7 proposed, both in terms of training and how you
8 would deal with it, that would ensure that we keep
9 any problem of that sort to a minimum.

10 But I think the idea of giving you a
11 report tomorrow would probably be better rather
12 than try to necessarily debate this any further
13 today.

14 PROJECT MANAGER CHEW: Staff would like
15 to make one comment on that. The railroad right-
16 of-way has got 70 feet in width, and from each
17 side, from the center line is a 35-foot right-of-
18 way. SMUD is proposing, from our understanding,
19 to be outside of that 35-foot right-of-way by
20 maybe six feet. So the actual distance from the
21 center line would be about 45 feet is staff's
22 understanding of the alignment.

23 APPLICANT COUNSEL COHN: That's correct.
24 Yeah, I'm sorry if I misspoke.

25 HEARING OFFICER SHEAN: But in any case,

1 this whole area, in terms of the recovery of
2 contaminated soils and their disposal and, if need
3 be, the substitution of uncontaminated soil to
4 then refill the trench is a fairly common and
5 accepted practice, isn't it? I mean, this thing
6 is pretty well bracketed by known mitigation
7 measures for the discovery of contaminated soil.
8 And I guess there is a worker safety issue
9 associated with it, but -- All right.

10 Let's do water and soil resources, the
11 NPDES permit.

12 PROJECT MANAGER CHEW: One other thing I
13 would like to add for waste management --

14 HEARING OFFICER SHEAN: Sure.

15 PROJECT MANAGER CHEW: -- was that staff
16 feels that there should be some testing of the
17 site and laydown area which is very close
18 proximity to the Rancho Seco nuclear plant itself
19 to determine if there has been any hazardous waste
20 or radioactive waste left on the site, and that is
21 another issue that we will be discussing at
22 tomorrow's workshop as well.

23 HEARING OFFICER SHEAN: Okay, and the
24 same general statement would apply.

25 APPLICANT COUNSEL COHN: Well, yes,

1 although I do need to indicate that under the
2 jurisdiction of the NRC we've had to do many, many
3 studies, and so I think the staff should really
4 avail itself of reviewing that which has already
5 been done before asking for further analysis.

6 HEARING OFFICER SHEAN: Okay. So your
7 opinion would be that paper will provide the
8 answer and not new soil samples.

9 APPLICANT COUNSEL COHN: Right, and we
10 also want to be cautious about this Commission
11 treading into areas where we're regulated by the
12 Federal NRC. But, you know, hopefully we'll work
13 this out tomorrow and won't leave the committee
14 having to resolve this.

15 STAFF COUNSEL HOLMES: We had discussed
16 this at an earlier workshop and SMUD said they
17 would provide some of this information from the
18 NRC but we haven't seen it, so --

19 PROJECT MANAGER HUDSON: We have it.

20 APPLICANT COUNSEL COHN: Yes, we have.

21 PROJECT MANAGER HUDSON: The last data
22 response.

23 APPLICANT COUNSEL COHN: It was in the
24 last data response.

25 PRESIDING COMMISSIONER PERNELL: Is it

1 docketed?

2 PROJECT MANAGER HUDSON: Yes.

3 APPLICANT COUNSEL COHN: It was
4 submitted in the last data response.

5 STAFF COUNSEL HOLMES: Okay. We'll go
6 back and look at it.

7 HEARING OFFICER SHEAN: All right.

8 APPLICANT COUNSEL COHN: And that may be
9 part of the confusion they have. They haven't
10 seen that.

11 PRESIDING COMMISSIONER PERNELL: All
12 right. Well, we're very optimistic about this
13 section.

14 HEARING OFFICER SHEAN: Last item.

15 PROJECT MANAGER CHEW: Water and soils.
16 The NPDES permit was accepted by the regional
17 water quality board yesterday. We have received a
18 letter stating that. Staff has not received a
19 completed copy of the accepted application yet,
20 and staff would like to have that information for
21 the PSA.

22 PRESIDING COMMISSIONER PERNELL: Okay.
23 I know you just stated this, and I was reading
24 something, so you have not received --

25 PROJECT MANAGER CHEW: We have not

1 received the completed accepted application from
2 the regional water quality control board yet.

3 PRESIDING COMMISSIONER PERNELL: Okay.
4 Which is another agency that we get information
5 from.

6 PROJECT MANAGER CHEW: Yes, that is
7 true.

8 HEARING OFFICER SHEAN: Now, what is the
9 level of detail you need on the NPDES permit in
10 order to do the PSA, and isn't that NPDES permit
11 subject to a public comment period?

12 PROJECT MANAGER CHEW: Staff would like
13 to see a copy of the completed application and
14 much of the information could be incorporated and
15 looked at and reviewed by in our PSA. As far as a
16 public review period on the NPDES, maybe Bob
17 Haussler could speak to that.

18 PRESIDING COMMISSIONER PERNELL: Well,
19 when you say completed application, you're talking
20 about the application to the water quality control
21 board?

22 PROJECT MANAGER CHEW: Yes.

23 PRESIDING COMMISSIONER PERNELL: And we
24 don't normally get that?

25 PROJECT MANAGER CHEW: We normally get

1 that for data adequacy; however, for this
2 particular project it was not completed. It was
3 not deemed complete by the regional water quality
4 control board at the time the AFC was deemed
5 complete, and it's taken a while for SMUD to get
6 that application complete and to the regional
7 water quality control board, and now the board has
8 deemed that application complete.

9 So now staff is asking for a copy of
10 that complete application.

11 PRESIDING COMMISSIONER PERNELL: Okay.

12 CEC STAFF HAUSSLER: Yeah, I would just
13 say also that the -- I believe the time frame for
14 them to produce a draft NPDES permit is normally
15 30 to 60 days, somewhere in that neighborhood at
16 the quickest. And once they do a draft NPDES
17 permit it goes out for public review and is
18 usually scheduled within three months to go before
19 the board to be adopted.

20 HEARING OFFICER SHEAN: Okay.

21 PRESIDING COMMISSIONER PERNELL:
22 Applicant?

23 APPLICANT COUNSEL COHN: Yes. Actually,
24 I think we have really a milestone here in that
25 the regional water board did send out a letter

1 just yesterday certifying that our application
2 permit was complete. And we actually submitted
3 the information back on March 28th and April 25th,
4 so I'm not sure why staff hasn't seen this, but
5 we'll make sure that if there's some -- for some
6 reason, some of the information that was submitted
7 to the regional water board did not find its way
8 in the docket we will certainly check on that.
9 But it's our belief that that's already been done
10 back on March 28th and April 25th, and that we now
11 have a complete application.

12 Now, getting the tentative NPDES will
13 take some amount of time, so it's obviously
14 somewhat of a similar situation to the air issue
15 in that we are waiting for the tentative permit.
16 But I think this was a major milestone to get them
17 to actually certify this as complete, because up
18 till recently they were so overwhelmed with, I
19 guess, work going on at that board that they
20 really didn't even have time to look at our permit
21 application.

22 PRESIDING COMMISSIONER PERNELL: So
23 between the letter and the application that you
24 submitted, that should satisfy staff on what, in
25 going forward with the PSA?

1 CEC STAFF HAUSSLER: That's correct.

2 PRESIDING COMMISSIONER PERNELL: Okay.

3 CEC STAFF HAUSSLER: There are other
4 areas in question in the water area, the water and
5 soil area, and staff --

6 PRESIDING COMMISSIONER PERNELL: In
7 water storage?

8 CEC STAFF HAUSSLER: Water and soils
9 area.

10 PRESIDING COMMISSIONER PERNELL: Oh,
11 okay.

12 CEC STAFF HAUSSLER: And staff certainly
13 is dependent upon additional information to draw
14 conclusions on the impact of the project and has
15 not yet concluded an alternatives analysis. And
16 so if the PSA were published in the near term, it
17 would be deficient in some areas in the water and
18 soils area. Though we would like it to be
19 complete, we've understood the need of SMUD to
20 have a PSA that may not be complete produced by
21 staff.

22 So there is further work for staff to do
23 in the water area, but we could produce a
24 deficient document with the sections --

25 PRESIDING COMMISSIONER PERNELL: Well,

1 we don't produce deficient documents in this
2 agency.

3 (Laughter.)

4 CEC STAFF HAUSSLER: For a PSA we could
5 produce a section that reports on our progress to
6 date.

7 PRESIDING COMMISSIONER PERNELL: Well,
8 let me ask you, it appears that you're saying that
9 you need additional information from the
10 applicant.

11 CEC STAFF HAUSSLER: This is correct.

12 PRESIDING COMMISSIONER PERNELL: Do they
13 know what that information is?

14 CEC STAFF HAUSSLER: I believe there is
15 information that we've requested that we've not
16 received in the area of impacts of the proposed
17 water use.

18 HEARING OFFICER SHEAN: Is this the
19 matter that they filed an objection to?

20 CEC STAFF HAUSSLER: I believe so, yes.

21 HEARING OFFICER SHEAN: Well, why don't
22 you folks discuss some of that stuff tomorrow
23 since you're getting together anyway and give us a
24 report on the status of the objection and whether
25 or not you anticipate a motion.

1 APPLICANT COUNSEL COHN: All right.

2 Yeah, I don't know if it's noticed for
3 that --

4 STAFF COUNSEL HOLMES: It's not noticed
5 for that.

6 HEARING OFFICER SHEAN: No, I know.

7 APPLICANT COUNSEL COHN: -- but if it's
8 possible to put out an addendum, we would be happy
9 to meet as soon as it can be properly noticed.

10 I just want to indicate, though, on the
11 sheet that was passed out to us, the only
12 deficiency noted was a copy of the NPDES permit
13 application accepted by the regional board, which
14 has now been done. I think what we're talking
15 about here is more of a substantive issue where
16 there may or may not be disagreement over our
17 power plant cooling, and that's an issue that we
18 definitely feel we have submitted reams of data,
19 that I don't think the issue is whether we've
20 submitted data. Fundamentally there may be a
21 disagreement about the impacts of our proposed
22 cooling system and other alternatives that we
23 would like to address as soon as possible,
24 basically.

25 STAFF COUNSEL HOLMES: The omission is

1 that item on the report is why it wasn't handed
2 out to you initially, is because it was missing
3 and we noticed that at the last minute.

4 There is information I believe that
5 there is -- that we have requested that hasn't
6 been provided. I know that staff is also trying
7 to obtain information from other agencies, not
8 directly from the applicant, but there is work
9 that other agencies have done on the water issue
10 that we are trying to obtain and have not yet been
11 able to obtain.

12 So I think Mr. Haussler's summary is
13 correct, we would not have a complete PSA on that
14 issue at this time.

15 PRESIDING COMMISSIONER PERNELL: You
16 know, this -- Let me ask a question here, and that
17 is actually our next topic, which is data
18 requests. The content of what you're requesting,
19 is it in relationship to some alternative
20 procedure that's not on the application?

21 PROJECT MANAGER CHEW: No.

22 PRESIDING COMMISSIONER PERNELL: It's
23 not?

24 STAFF COUNSEL HOLMES: No. It has to do
25 with impacts associated with the water use

1 proposed by the project.

2 PRESIDING COMMISSIONER PERNELL: Okay.

3 And we don't have that information. Does the
4 applicant understand the type of information
5 that --

6 APPLICANT COUNSEL COHN: If I may, we
7 have submitted --

8 PRESIDING COMMISSIONER PERNELL: Well,
9 wait a minute, wait a minute.

10 APPLICANT COUNSEL COHN: Yes.

11 PRESIDING COMMISSIONER PERNELL: Does
12 the applicant understand the type of information
13 that is being requested?

14 APPLICANT COUNSEL COHN: No, I don't.
15 Because we have submitted responses to every data
16 request in this area. To the extent that we
17 objected, there has been no motion to compel, so
18 we're not aware there is any data request
19 outstanding in this area. And so if there is, I'd
20 like to know what it is, because I do not --

21 PRESIDING COMMISSIONER PERNELL: Well, I
22 think you're going to hear that.

23 STAFF COUNSEL HOLMES: Well, yes, let me
24 speak to that. I don't think that you should
25 assume that because there is no motion to compel

1 that the data has miraculously appeared at the
2 Energy Commission or that we've decided we don't
3 need it.

4 When SMUD made a very strong request to
5 move forward with the PSA, we decided that one of
6 our options would be rather than to file a motion
7 to compel at the same time that we're preparing a
8 PSA, which seemed sort of redundant, we would
9 simply note the deficiencies and note how they
10 affected our analysis and our conclusions in the
11 PSA.

12 Now, if there is going to be a change in
13 the schedule and there is not going to be a PSA in
14 the immediate future, I suspect that staff will,
15 in fact, file a motion to compel on several of the
16 data requests to which the applicant has objected,
17 and possibly to some others which the applicant
18 has stated that they have provided a response but
19 which staff believes are inadequate.

20 PRESIDING COMMISSIONER PERNELL: Well,
21 this committee is not aware of exactly what the
22 opposition is. My question is this. The
23 applicant filed an application. Part of that has
24 to do with water and soil. The data that you're
25 asking them for has to do with their application,

1 nothing else.

2 So, Mr. Cohn, what is your objection to
3 the data if it reflects what your application is
4 reflecting?

5 APPLICANT COUNSEL COHN: Well, we've
6 submitted --

7 PRESIDING COMMISSIONER PERNELL: It's
8 not what you've submitted. Because you've
9 submitted it, it doesn't make it accurate enough
10 for us to do the analysis.

11 APPLICANT COUNSEL COHN: Well, if you
12 want to speak directly to why we objected to
13 certain data requests, we'd be happy --

14 PRESIDING COMMISSIONER PERNELL: Yeah,
15 let's go --

16 APPLICANT COUNSEL COHN: Do you want to
17 do that at this time? Because we submitted a lot
18 of data in this area, and so if you would like us,
19 we can speak specifically to that. Is that your
20 request?

21 PRESIDING COMMISSIONER PERNELL: Why
22 don't you -- Yes.

23 APPLICANT COUNSEL COHN: Okay. Just a
24 moment, because we weren't expecting that
25 particular issue.

1 APPLICANT COUNSEL LUCKHARDT: I guess
2 I -- I'm sorry, Commissioner Pernell --

3 PRESIDING COMMISSIONER PERNELL: If you
4 can stand up at the podium and state your name for
5 the record.

6 APPLICANT COUNSEL LUCKHARDT: That will
7 work. Hi, this is Jane Luckhardt -- I worked on
8 the objections -- from Downey Brand -- on behalf
9 of SMUD. And I'm prepared to respond to any
10 particular ones, if we can get some clarity from
11 staff as to which data responses they have
12 concerns about, and so that I know what I'm
13 responding to.

14 We objected to a variety of data
15 requests. A lot of them, to my understanding, we
16 have worked out with staff, and we have provided,
17 SMUD has provided information. And it was our
18 understand that staff was satisfied, because we
19 haven't heard otherwise.

20 And so I guess we're looking to staff to
21 say which ones do you have concerns about, and
22 then I can go through and explain why we objected
23 and whether we still have concerns.

24 PRESIDING COMMISSIONER PERNELL: Okay.
25 Let's do this. Staff has some objections,

1 obviously. Now, if you guys can meet off line,
2 and then with the report that we're going to get
3 from the meeting tomorrow, we can hash this issue
4 out. I don't think we need to do it here, but
5 certainly there is a miscommunication about the
6 data request.

7 And let me remind the applicant that
8 staff does the analysis for this committee. So
9 just because you respond to a data request does
10 not mean that that's all you have to do, because
11 it may not be sufficient, and it may cause another
12 question to be asked which then would trigger
13 another data request, and you are familiar with
14 this, I'm sure.

15 APPLICANT COUNSEL COHN: We've been
16 through four rounds of that, Mr. Pernell.

17 PRESIDING COMMISSIONER PERNELL: Where
18 this committee wants to go is forward.

19 So I would suggest that after this
20 meeting or whenever time permits with staff that
21 you sit down, find out and get clarity on what
22 type of information they're looking for so that we
23 can move forward in this particular category. Is
24 that understood by all the parties here?

25 APPLICANT COUNSEL LUCKHARDT: And we've

1 been working towards that. There have been
2 communications between consultants of SMUD and
3 staff in attempts to work that out, and we
4 understand what you're saying and we will continue
5 to work with staff.

6 But from SMUD's behalf, we need to know
7 in addition what they need. And if we don't get
8 that, it's hard for us to respond.

9 PRESIDING COMMISSIONER PERNELL: All
10 right, and that's fair. And I would just ask
11 staff to sit down, explain to them what they need,
12 and if they don't provide that efficiently then
13 we've still got to move forward and that item or
14 that area won't have sufficient information for
15 you to do an analysis.

16 STAFF COUNSEL HOLMES: Right, and our
17 plan was to do that, but given their desire for a
18 PSA in the immediate future we decided that we
19 simply didn't have the resources to both sit down
20 and meet with them, go over that, discuss a motion
21 to compel, and finish the PSA. So our plan was to
22 put exactly that type of information into the PSA.
23 If the PSA is not going to be happening in the
24 immediate future, we're happy to sit down and work
25 with them through it that way. That's fine.

1 CEC STAFF HAUSSLER: And I would just
2 like to make one comment, if I could. We received
3 a letter from the regional water quality board
4 dated yesterday, and they indicated that with
5 additional information submitted by SMUD on
6 March 28th and April 25th, they've deemed their
7 application or report of waste discharge complete
8 so they can begin their evaluation.

9 Some of this information which staff
10 doesn't have may suffice to meet our data
11 requirements and data requests, but we're not
12 aware of exactly what was in that application
13 report. Staff needs a copy of that and that's why
14 we had ask that we need the report.

15 PRESIDING COMMISSIONER PERNELL: All
16 right. Applicant has agreed to give staff a copy
17 of that; is that correct?

18 APPLICANT COUNSEL COHN: Yes.

19 CEC STAFF HAUSSLER: And that may very
20 well enlighten us as to some of the other things
21 that we'd asked for, providing us the ability to
22 follow through with our analysis.

23 PRESIDING COMMISSIONER PERNELL: So it
24 sounds like your suggestion is you would want to
25 see the application because it might answer a lot

1 of the questions that you have pending.

2 CEC STAFF HAUSSLER: That's correct.

3 APPLICANT COUNSEL COHN: That's fine. I
4 mean, we've submitted it already, but maybe there
5 are things that they overlooked.

6 PRESIDING COMMISSIONER PERNELL: Well,
7 you know, things are not perfect, so if there's a
8 communication gap, that's why this committee is
9 having this hearing.

10 APPLICANT COUNSEL COHN: Yes.

11 CEC STAFF HAUSSLER: Right.

12 PRESIDING COMMISSIONER PERNELL: We want
13 to get to the bottom of it.

14 CEC STAFF HAUSSLER: Appreciate that.

15 PRESIDING COMMISSIONER PERNELL:
16 Mr. Shean.

17 HEARING OFFICER SHEAN: All right. Did
18 we have any members of the audience who would like
19 to speak?

20 We have Mr. Berkebile, is it? Would you
21 like to speak, sir?

22 We'll go in whatever order people would
23 like to proceed.

24 PRESIDING COMMISSIONER PERNELL: Yes,
25 just step up to the mic, state your name for the

1 record and proceed.

2 BUREAU OF RECLAMATION REP LESLEY: All
3 right. Thank you for the opportunity to speak,
4 Commissioner Pernell and Hearing Officer Shean.

5 My name is Cecil Lesley. I am a
6 repayment specialist for the Bureau of
7 Reclamation. We have a water service and wheeling
8 contract with SMUD. At this time we're
9 negotiating a renewal of that contract under the
10 Central Valley Project Improvement Act, and in
11 doing so we have completed a programmatic
12 environmental impact statement on the delivery of
13 that water, and we're working currently on a site-
14 specific EIS to allow delivery of that water.

15 In that work we have completed a water
16 needs analysis for the proposed gas-fired plants,
17 and our regional office has determined that the
18 use of that water would be a beneficial use under
19 our water rights permits. We have started our
20 Section 7 compliance with Fish and Wildlife
21 Service and NMFS for any impacts to water
22 resources, and we expect that this work should be
23 completed sometime within the next nine months.

24 Do you have any questions?

25 PRESIDING COMMISSIONER PERNELL: I

1 don't, but I appreciate your moving forward.

2 Do you have any questions?

3 HEARING OFFICER SHEAN: That was nine
4 months; is that correct?

5 BUREAU OF RECLAMATION REP LESLEY: I
6 believe that that's the schedule we're on right
7 now.

8 HEARING OFFICER SHEAN: All right.

9 PRESIDING COMMISSIONER PERNELL: Does
10 staff have any questions?

11 Thank you very much --

12 CEC STAFF HAUSSLER: If I could ask one
13 quickly?

14 PRESIDING COMMISSIONER PERNELL: Yes.

15 CEC STAFF HAUSSLER: Is there any
16 additional environmental-related work related to
17 this contract or is there environmental work
18 supporting this contract that has been done
19 previously?

20 BUREAU OF RECLAMATION REP LESLEY: This
21 contract was initially let in 1970, and I believe
22 that there was some environmental work that was
23 done on it at that time. We have completed a
24 programmatic environmental impact statement for
25 all of our contracts in the Central Valley Project

1 to look at those impacts programmatically.

2 We're currently doing a site-specific
3 environmental impact statement that will speak to
4 the impacts of delivering water from the American
5 River system itself.

6 STAFF COUNSEL HOLMES: When will that be
7 available?

8 BUREAU OF RECLAMATION REP LESLEY:
9 That's what I was talking about being available in
10 about nine months.

11 STAFF COUNSEL HOLMES: In nine months.

12 CEC STAFF HAUSSLER: Thank you.

13 HEARING OFFICER SHEAN: Thank you,
14 Mr. Lesley.

15 DWR REP BERKEBILE: Good morning,
16 Commissioner Pernell, Mr. Shean, and Ms. Smith.

17 PRESIDING COMMISSIONER PERNELL: Good
18 morning.

19 DWR REP BERKEBILE: I'm Tad Berkebile.
20 I'm with the Sacramento County Department of Water
21 Resources, and my comment today is pertaining to
22 water use by SMUD at the proposed plants. And I
23 just wanted to give you a little bit of
24 background.

25 Sacramento County Department of Water

1 Resources is a major supporter of the water forum
2 process, which is -- which the SMUD board referred
3 to in early opening comments.

4 SMUD is also -- Well, the water forum
5 process is a regional solution for protecting the
6 valuable resources of the lower American River,
7 and for providing reliable water supplies to the
8 greater Sacramento area. SMUD is a key
9 stakeholder in the water forum process, and it is
10 key to continuing protection and increased
11 protection of the lower American River.

12 It will be supporting -- Through its
13 agreement in the water forum, it will be
14 supporting a new flow standard, and will also be
15 or has already agreed at this point to cut back on
16 its water use during dry years and critically dry
17 years. It has also agreed to forego over half of
18 its existing Central Valley Project Bureau of
19 Reclamation contract water supplies and make those
20 available to others within the Sacramento region.

21 We support SMUD using a portion of its
22 water entitlements which its retaining for the
23 proposed new generation. We understand that the
24 Commission staff, however, is seeking to require
25 the use of dry cooling or, as an alternative,

1 reclaimed water for cooling. Use of dry cooling
2 is costly and extremely inefficient in the most
3 critically hot periods, and use of reclaimed water
4 would be very costly and bring additional
5 regulatory burden on the wastewater discharge that
6 SMUD would be faced with.

7 Both of these options would seriously
8 increase the customer's cost of energy, and
9 denying SMUD the use of the existing entitlements
10 could jeopardize the water forum agreement. If
11 SMUD is forced to go with either of these options,
12 these two cooling options, they would have no
13 incentive to continue with their critical support
14 in the water forum.

15 Without the establishment of a new lower
16 American River flow standard, low river flows
17 would threaten the fisheries, would have
18 detrimental effect on riparian habitat, and
19 degrade the recreational experience of this
20 valuable regional natural resource. Without
21 SMUD's commitment to provide a portion of their
22 water supplies to others in the Sacramento area,
23 it would be lost to a crowd of other needy
24 customers outside the region.

25 I appeal to you to please help us ensure

1 that the water forum is a success, help us to
2 ensure that the last ten years of sweat and hard
3 work were not in vain. Please allow SMUD to use
4 its existing water entitlements as it has planned.

5 Are there any questions?

6 PRESIDING COMMISSIONER PERNELL: I have
7 no questions. I do have a comment, though,
8 because I'm a little bit confused.

9 This is not an evidentiary hearing, and
10 it appears to me that there is some indication
11 that this committee is trying to respond to
12 something that's not on the application, and that
13 is not the case. SMUD has submitted an
14 application, staff has indicated all of the data
15 requests pertaining to that application, so we
16 are -- you know, me personally thinks that the
17 water forum has done a good job for this region
18 and we want to see it continue, but at this time
19 this committee is not looking at anything other
20 than the application.

21 So by saying that staff is suggesting
22 dry cooling and putting pressure on SMUD, staff is
23 not the committee, and they also -- they have
24 alternatives, and I'm sure that they do their work
25 very well. But I think that we're doing a lot of

1 unnecessary rhetoric about this plant.

2 What I would like to see is the
3 applicant get the information to the various
4 agencies in a timely manner so that we can go
5 forward with processing the application.

6 And this is not directed at you, but
7 while I have the podium here, the other thing is,
8 and we'll speak to this, is that, you know, I had
9 the opportunity of watching the SMUD board meeting
10 where the Energy Commission is somehow the villain
11 because we're holding up the application. And
12 it's because of, in my opinion, a lack of
13 understanding. There are other agencies involved
14 in this that we need information from to complete
15 our analysis. And it's not up to us to go get
16 that information, it is up to the applicant to do
17 that.

18 And so to sit back and complain about
19 this is taking too long rather than going forward
20 and getting the necessary information from the
21 agencies that you need so we can complete our
22 analysis, I think blaming the Commission for
23 delays is a little bit disingenuous. And I would
24 hope that the -- And I know that board members
25 have left, but I would certainly hope that staff

1 for SMUD brief the board on exactly what these
2 delays are about.

3 I'm sorry to have you up here. This
4 wasn't directed at you at all.

5 DWR REP BERKEBILE: That's not a
6 problem, and I understand that the committee's
7 focus is much more narrow than the issue that I
8 was talking about, but I do appreciate you
9 allowing me to make a comment.

10 PRESIDING COMMISSIONER PERNELL: And I
11 appreciate the water forum and your being here.

12 DWR REP BERKEBILE: Thank you.

13 HEARING OFFICER SHEAN: It's only
14 narrower for this particular day. Ultimately, it
15 will embrace what you've spoken about. We just
16 think it's important to understand that staff has
17 an obligation under the California Environmental
18 Quality Act to review potential alternatives to
19 the project that may reduce any of the impacts
20 and, of course, we have the state water policy
21 that we have to look at as one of the guidelines
22 for appropriate use of surface waters, and they're
23 just going to do their job and we'll invite you
24 back, if you'd like to, at the time when the
25 matter you've discussed will come up.

1 DWR REP BERKEBILE: We would appreciate
2 that opportunity.

3 HEARING OFFICER SHEAN: All right.
4 Thank you.

5 Is there any other comment from the
6 audience? Is there a comment from anyone on the
7 telephone?

8 Any closing from either the staff or the
9 applicant?

10 APPLICANT COUNSEL COHN: I would like
11 to, after staff goes.

12 HEARING OFFICER SHEAN: Anything from
13 the staff?

14 STAFF COUNSEL HOLMES: We don't have
15 anything.

16 HEARING OFFICER SHEAN: Oh, okay.

17 Your turn.

18 APPLICANT COUNSEL COHN: If I may, then,
19 I guess I need to apologize if SMUD has given the
20 impression that we're trying to put blame on this
21 committee for delays in this process. Far from
22 it. We're actually here to implore and ask for
23 your help in trying to keep this process on track.

24 So we certainly in no way intended to
25 give the impression that we were putting blame on

1 the Commission.

2 PRESIDING COMMISSIONER PERNELL: I'm
3 just responding to one of your board meetings by,
4 a comment by some of your board of directors.

5 So if there is a misconception, it's on
6 your side.

7 APPLICANT COUNSEL COHN: All right. And
8 let me say, though, you know, I've spent a few
9 years working in this area. I cut my teeth as a
10 CEC staff counsel working on many controversial
11 cases, and if you hear a little bit of frustration
12 on our part, it's that we see the standards
13 changing over time in terms of the information
14 that is required to be presented at various stages
15 of the process, not that this committee has
16 ordered, but I'm talking about more at the level
17 of the various regulatory staffs.

18 I'm not just speaking about the CEC
19 staff, just regulatory staffs in general. That's
20 a frustration that we feel, that the standards
21 have changed without the regulations themselves
22 changing, just people's interpretation over time.

23 We will present whatever is appropriate
24 to this committee. We feel, if you look back
25 here, this is what we've already submitted, three

1 boxes of information on this project. So we're
2 definitely not trying to withhold information and
3 we would like to try to work with your staff and
4 all the other staff to try to minimize the
5 disputes that come before your committee.

6 I just want you to understand that we
7 are doing everything within our power to try to
8 present information so that you can have an
9 informed decision at the end of the process, and I
10 guess just in closing I would like to ask the
11 committee, after you receive a report back on the
12 workshop tomorrow, to give consideration to our
13 request that the PSA go forward as soon as
14 possible, and hopefully even as early as this
15 Friday, May 17th, with the understanding that
16 there will be work yet to do before we get to the
17 FSA and the evidentiary hearing.

18 Thank you.

19 HEARING OFFICER SHEAN: All right.

20 STAFF COUNSEL HOLMES: Maybe I will
21 offer something.

22 HEARING OFFICER SHEAN: Now you have a
23 comment.

24 STAFF COUNSEL HOLMES: I think I'm going
25 to suggest an alternative approach here, and

1 I'm -- this isn't something that we've discussed
2 before, but in light of the conversations that
3 we've had here today about whether or not there is
4 miscommunication about the information that's been
5 submitted or whether or not it's sufficient, I
6 think a different approach to publishing the PSA
7 on Friday might be appropriate.

8 I was proposing to suggest that we hold
9 a workshop on the informational issues and resolve
10 all that as soon as we can notice it. And report
11 back to the committee on that. If there is a need
12 in staff's opinion to file a motion to compel, we
13 can commit to doing that as soon as the workshop
14 is over.

15 But I feel that we might benefit from
16 sitting down, particularly with the technical
17 staff, and going through the informational issues
18 item by item. It was something we had actually
19 planned to do until SMUD had made such a strong
20 request for the PSA, and we did not have enough
21 time to do both that process and complete the PSA,
22 and my suggestion at this point is simply we go
23 back to that kind of an approach where we sit down
24 and work with them in the immediate future and
25 report back to the committee when that process is

1 complete.

2 PRESIDING COMMISSIONER PERNELL: Well,
3 what the committee will do is we have heard all of
4 the, all of your comments. We'll take them under
5 advisement. We encourage a productive meeting
6 tomorrow, and a report of that meeting, and then
7 the committee will sit down and make a decision as
8 to whether to go forward with the PSA or any other
9 options that we have.

10 Again, my interest is moving forward,
11 and the various agencies, although we don't
12 control any other state or federal agencies, but
13 to the extent that you need additional information
14 to those agencies, I would encourage that you get
15 it to them, give them a call, see if they've got
16 everything they need so that they can get that
17 information to us so that we can move forward.

18 So a lot has been commented on about the
19 data requests, but a lot of that stuff is we're
20 looking for additional information to fulfill our
21 role in processing the application. And it is up
22 to the applicant to do that. Now, if there is a
23 miscommunication, we're going to sit down and work
24 those out, but I would simply say now that once
25 the committee gets the additional information

1 tomorrow, I have no reason to think that it won't
2 be a productive day, then we will decide on -- and
3 put out an order as to how we will proceed.

4 But I think a lot depends on what
5 happens tomorrow.

6 HEARING OFFICER SHEAN: I'd just like to
7 say one thing further. The regulatory review of
8 cases in 2001 has given us substantial lessons in
9 what it means to line up all the ducks in a row,
10 and what happens when you don't.

11 And one of the things that we have to be
12 able to see and some are the standardized
13 schedules that arose in the four-month proceedings
14 and six-month proceedings is that when information
15 is not at hand, you have a choice of either
16 marking time, which necessarily means the schedule
17 extends, or what in the past has been a showdown
18 at high noon on Main Street of, well, if you don't
19 extend the schedule, then the answer is no.

20 Hopefully we're not going to get into
21 that, but we're going to go back and look at the
22 lessons that we have learned out of the expedited
23 proceedings we've had in the past, as well as
24 lessons we've learned from those that were not
25 expedited so that we assure that there is the

1 orderly conduct of this particular case,
2 contemplating everything that we need to get to,
3 in terms of the decision at the end.

4 Because ultimately, there's no reason in
5 hurrying now to wait later if you can pace this
6 through the entirety of a case in a manner that
7 makes for the orderly processing of the AFC.

8 So we're going to take the matter under
9 submission, and do the best we can with it. I'm
10 quite sure we won't satisfy everybody, but usually
11 that means you hit the target just about right.
12 And we'll get an order out to the parties as
13 quickly as possible.

14 APPLICANT COUNSEL COHN: Mr. Shean,
15 there is one, and Mr. Pernell, I have one recent
16 development, as in the last few minutes, to
17 report.

18 HEARING OFFICER SHEAN: Okay.

19 APPLICANT COUNSEL COHN: SMUD staff met
20 with some of the air quality management staff and
21 CEC staff in the back of the room after we talked
22 about the air quality, and apparently at this
23 point the air district will go ahead and provide
24 an early draft of the PDOC to CEC staff, as they
25 indicated they would have in late June, with parts

1 provided even in early June. And this should
2 allow staff to more closely track the PDOC so that
3 rather than waiting 30 days after seeing the PDOC
4 in late July, what they consider to be their
5 complete PDOC, the staff could hopefully complete
6 that PSA section as soon as they receive that,
7 since they would have already received everything
8 as it went along.

9 And hopefully we can have that level of
10 cooperation on these other issues. I would like
11 to see us meet more often and have more workshops
12 so we can work on this. We've only had I think
13 two or three workshops up till now, and that may
14 be something that we need to do more of to try to
15 work these issues out.

16 Thank you.

17 PRESIDING COMMISSIONER PERNELL: All
18 right. Does staff have a comment?

19 STAFF COUNSEL HOLMES: My only comment
20 on the PDOC issue, it's certainly going to be
21 helpful to have a copy earlier, and it may assist
22 if it is complete with the PSA. My bigger concern
23 is longer term, and that's that you still aren't
24 going to have a final FDOC until the end of
25 August. And that affects the longer term

1 schedule. That's all.

2 HEARING OFFICER SHEAN: Well, we've been
3 able to accommodate this PDOC/FDOC matter, and it
4 basically puts the onus on ultimately the
5 applicant to ensure that whatever comments have
6 been received on the PDOC, that there is not a
7 significant difference between the PDOC and the
8 FDOC, which we've been able in these expedited
9 proceedings to accommodate that when there is not
10 a significant difference in them. When there is a
11 significant difference, you basically back up a
12 little bit and add more time.

13 So I think we have in mind how we might
14 be able to do this, and if some draft information
15 is going to be available between mid- to end of
16 June, we'll take that into account.

17 PRESIDING COMMISSIONER PERNELL: Well,
18 just as a final note, I'm very encouraged by just
19 the recent developments, so this was not -- this
20 was time well spent. And I think that we can and
21 we have in numerous cases worked these issues out.
22 It is just a matter of communication, sitting
23 down, being patient; these are complex issues, and
24 they're not going to happen overnight.

25 And staff has said that they're willing,

1 applicant has said that they're willing, and I'm
2 very encouraged by that. So I think that we will
3 get through this and get through it in a timely
4 manner, but you've got to keep in mind that we
5 have a constitutional mandate to look at certain
6 issues and there is no getting around that by any
7 circumstances.

8 All right, anything else to come before
9 the committee? Anyone else that would like to
10 speak to the committee on issues before us?

11 Thank you. Thank you all for coming.
12 The committee meeting is adjourned.

13 (Thereupon, the hearing was
14 adjourned at 12:05 p.m.)

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission status conference; that it was
thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
conference, nor in any way interested in outcome
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IN WITNESS WHEREOF, I have hereunto set
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